

No. 10187

United States
Circuit Court of Appeals

For the Ninth Circuit.

JULIA C. COLLINS and HATTIE L. MOSHER,
Appellants,

vs.

JOE O'CONNELL and JESSIE B. O'CONNELL,
husband and wife,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

1957-5-1942

PAUL D. O'BRIEN,

Clerk

No. 10187

United States
Circuit Court of Appeals
For the Fifth Circuit.

JULIA C. COLLINS and HATTIE L. MOSHER,
Appellants,
vs.

JOE O' CONNELL and JESSIE B. O'CONNELL,
husband and wife,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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Attorneys for Appellants.

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Phoenix, Arizona,
Attorneys for Appellees. [3*]

*Page numbering appearing at foot of page of original Transcript of Record.

In the Superior Court of Maricopa County
State of Arizona

No. 48347, Div. 1

JOE O'CONNELL and JESSIE B. O'CONNELL,
husband and wife,

Plaintiffs,

vs.

JULIA C. COLLINS, and HATTIE L. MOSHER,
Defendants.

COMPLAINT

Come now the plaintiffs, Joe O'Connell and Jessie B. O'Connell, his wife, and complain of Julia C. Collins and Hattie L. Mosher, the defendants, as follows, to-wit:

I.

That on the 24th day of February, 1913, J. Gerard, a widow, was the owner and in possession of that certain parcel of real estate situated in the City of Phoenix, County of Maricopa, State of Arizona, described as:

Lot Two (2) in Block Three (3) of Churchill Addition, and addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at Page 69 thereof.

II.

That on said 24th day of February, 1913, said J. Gerard, a widow, by warranty deed, recorded in the

office of the County Recorder of Maricopa County, Arizona, on March 1, 1913, in Book 102 of Deeds, at page 90, conveyed the above described premises to Greene and Griffin Real Estate and Investment Company, a corporation. [4]

III.

That thereafter on July 1, 1914, said Greene and Griffin Real Estate and Investment Company, a corporation, by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on July 9, 1914, in Book 110 of Deeds, at page 179 conveyed said premises to Hattie L. Mosher, a widow.

IV.

That thereafter on March 1, 1929, said Hattie L. Mosher, a widow, executed a note for the principal sum of Six Thousand (\$6,000.00) Dollars to Elsie B. Ganz, a widow, and to secure the payment of said note said Hattie L. Mosher executed and delivered to said Elsie B. Ganz a realty mortgage on the above described premises, dated March 1, 1929, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 6, 1929, in Book 225 of Mortgages, at page 481.

V.

That said Hattie L. Mosher neglected and refused to pay said note when the same became due and thereafter, on or about the 16th day of September, 1931, said Elsie B. Ganz filed a suit against the said

Hattie L. Mosher to foreclose said mortgage; and that such proceedings were had in said foreclosure suit that a judgment was regularly entered in said suit, foreclosing the said mortgage and directing the premises therein described to be sold in satisfaction of the indebtedness represented by said note; and in pursuance of said judgment, an execution and order of sale was issued and said premises were ordered sold and were purchased by said Elsie B. Ganz, plaintiff in said suit, and that neither the said Hattie L. Mosher nor anyone else redeemed from said sale and after the time for redemption had expired, to-wit, on or about the 27th day of October, 1932, a sheriff's deed was duly issued by the [5] sheriff of Maricopa County, Arizona, conveying the above-described premises to the said Elsie B. Ganz, said sheriff's deed being recorded in the office of the County Recorder of Maricopa County, Arizona, on December 15, 1932, in Book 270 of Deeds at page 313.

VI.

That thereafter, on or about, May 1, 1934, the said Elsie B. Ganz, a widow, by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on June 6, 1934, for valuable consideration, conveyed the above-described premises to the plaintiffs herein.

VII.

That plaintiffs immediately upon said conveyance last-mentioned being made took possession of said

premises under said conveyance, and ever since said date, have been in possession of said premises, claiming the title thereto as against the whole world; and that such possession has been a visible and open and exclusive appropriation of said premises; and that plaintiffs since said date have paid the taxes upon the above-described premises.

VIII.

That the defendants claim some right, title or interest in, or lien upon the above-described premises and have cast a cloud upon the title of plaintiffs to said premises by certain proceedings had and conducted between themselves in the United States District Court, for the District of Arizona, and by placing of record a purported special master's certificate of sale on foreclosure and a deed of special master purporting to convey the purported interest of the said Hattie L. Mosher in said premises to the said Julia C. Collins; that said purported proceedings and purported special master's certificate of sale on foreclosure and said deed [6] of special master are wholly without right and were made for no purpose except to cloud the plaintiff's title to said premises.

IX.

That plaintiffs have been damaged by the placing of said proceedings and instruments above described of record in the sum of Two Hundred (\$200.00) Dollars; and that the acts of the defendants in creating said cloud upon plaintiffs' title were done with

the express purpose and intent of harassing and injuring the plaintiffs; and that defendants should be held responsible in exemplary damages in the sum of Five Hundred (\$500.00) Dollars on account of their intentional wrongful acts above alleged.

Wherefore, plaintiffs pray for judgment adjudicating and decreeing that the plaintiffs are the owners, in fee simple, of the above-described premises; and that defendants have no right, title, claim or interest therein, or lien thereon; and that the purported foreclosure proceedings, special master's certificate of sale on foreclosure, and deed of special master have no validity and have no force and effect as against the title of the plaintiffs; and for the sum of Two Hundred (\$200.00) Dollars actual damages; and the sum of Five Hundred (\$500.00) Dollars exemplary damages; and such other and further relief as the court may deem proper.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE & COOL-
IDGE,

201 Professional Building,
Phoenix, Arizona.

By J. L. GUST,
J. L. GUST,

Attorneys for Plaintiffs. [7]

(Duly verified.)

[Endorsed]: Filed Jan. 30, 1940. [8]

[Title of Superior Court and Cause.]

ORDER FOR REMOVAL TO UNITED STATES
DISTRICT COURT

This Court Now Orders this cause numbered 48347, Division 2, removed to the United States District Court for the District of Arizona, for the reason that:

Julia C. Collins, a non-resident defendant herein, being a resident of the State of Oregon, residing at Portland, Oregon, who has a separable controversy from that of the other defendant in this action; the said Hattie L. Mosher having no right, title, or interest in the property set forth in the complaint as is clearly shown by the pleadings in the plaintiff's complaint; has filed her Petition for Removal, her Bond for Removal, and given Notice thereof, all in due form and within the required time, and all as provided by the laws and rules of both courts, and in accordance with the statutes, and

It Appearing to This Court that this is a proper cause for removal and that the acts complained of by plaintiffs were done and committed in the said Federal Court, as shown in plaintiffs' complaint;

Therefore, It Is Ordered that no further proceedings be held in the Superior Court of Maricopa County, Arizona, and the Clerk of said Court is Ordered to prepare a certified record and transmit the same to the Federal Court within the time prescribed by law, and to enter a Minute Order showing this removal.

Done in Open Court April 10th, 1940.

G. A. RODGERS,
Presiding Judge. [9]

[Endorsed]: Filed April 29, 1940. [10]

In the District Court of the United States
For the District of Arizona
Civil 114—Phoenix

JOE O'CONNELL and JESSIE B. O'CONNELL,
husband and wife,

Plaintiffs,

vs.

JULIA C. COLLINS, and HATTIE L. MOSHER,
Defendants.

NOTICE OF REMOVAL

To the Plaintiffs, Joe O'Connell and Jessie B. O'Connell, his wife, and Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, their attorneys:

Notice is hereby given that the defendants have removed the above entitled cause to the District Court of the United States in and for the District

of Arizona and the record on removal has been filed with the Clerk of said court.

GEORGE F. MACDONALD,
Attorney for Defendants,
507 Luhrs Tower,
Phoenix, Arizona.

Received copy of the within Notice this 28th day of May, 1940.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE & COOL-
IDGE,
Attorneys for Plaintiffs.

[Endorsed]: Filed May 28, 1940. [11]

[Title of District Court and Cause.]

AMENDED ANSWER

Come Now the defendants, Julia C. Collins and Hattie L. Mosher, and for their Amended Answer to the plaintiffs' complaint, admit, deny and allege, as follows, to-wit:

I.

Admit the allegation in plaintiff's complaint that February 24th 1913 J. Gerard was the owner and in possession of Lot Two (2), Block Three (3), of Churchill Addition to the City of Phoenix.

II.

Admit the transfer of the said lot set forth in Paragraph II of plaintiffs' complaint and allege that in connection with that transfer the grantee therein, as a part of the transaction, and as a part of the purchase price, executed and delivered to J. Gerard, the grantor therein, that certain Realty Mortgage for \$9,000.00 of record in the office of the Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, at Page 303.

III.

Admit the conveyance of the said premises to Hattie L. Mosher, a widow, which said premises were subject to the \$9,000.00 Realty Mortgage executed by the Greene & Griffin Real Estate and Investment Company, a corporation, to J. Gerard.

IV.

Answering Paragraph IV of plaintiffs' complaint these defendants allege that at the solicitation of the agent and attorney [12] of Elsie B. Ganz that Hattie L. Mosher executed a note and mortgage for \$6,000.00 to Elsie B. Ganz and delivered the same to the said agent and attorney together with her check for \$28.50 of which sum \$3.50 was for recording the mortgage and \$25.00 was for the commission of the said agent and attorney who then delivered to the said Hattie L. Mosher a check for \$6,000.00 on the National Bank of Arizona informing her, at that time, that the interest checks were to be delivered to the said bank.

Defendants further allege that the said Mosher procured an abstract to be made by a Title Company who delivered it to the said agent and attorney of Elsie B. Ganz. That the records of the office of the Recorder of Maricopa County, Arizona, affirmatively showed that at the time of the execution of the \$6,000.00 mortgage to Elsie B. Ganz that the premises in question were subject to the previous mortgage of \$9,000.00 given to J. Gerard.

Defendants further allege that an extension of the \$9,000.00 mortgage to J. Gerard was made October 7, 1918 to February 24, 1928.

Defendants further allege that October 7, 1919 Julia Mosher Collins purchased the said mortgage of J. Gerard taking an assignment thereof from the said J. Gerard.

V.

Answering Paragraph V of plaintiffs' complaint these defendants deny that the Ganz mortgage was due as it was written March 1, 1929, to run for three (3) years and allege that the interest had been paid but admit that September 16, 1931, for some technical reason, Elsie B. Ganz brought suit to foreclose her second mortgage and a purported sheriff's deed was issued to her which was recorded as alleged in Paragraph V of plaintiffs' complaint.

However, in this connection, these defendants allege that Julia Mosher Collins, the mother of the defendant Julia C. Collins, died May 4, 1920, intestate, that Julia C. Collins was the sole [13] heir to the

private property of her mother and was her only child. That there were no debts owing by the said Julia Mosher Collins and so no probate of her estate and that although the defendant, Julia C. Collins, was the sole heir of Julia Mosher Collins and the sole owner of the aforesaid first mortgage after the death of her said mother, she, the defendant Julia C. Collins was not made a party to the foreclosure suit brought by the said Elsie B. Ganz for her \$6,000.00 second mortgage as set forth in Paragraph V of plaintiffs' complaint.

That the assignment of the \$9,000.00 Gerard mortgage, made by J. Gerard to Julia Mosher Collins, October 7, 1919, after the payment by the said Julia Mosher Collins to the said J. Gerard, of the sum of \$9,000.00 in cash, was duly recorded in Book 7, of Assignment of Mortgages, at page 159. That the extension of the mortgage had been previously recorded in the office of the Recorder of Maricopa County, Arizona, in Book 114, of Mortgages, at Page 361.

That at the date of the death of Julia Mosher Collins, the mother of defendant Julia C. Collins, the said Julia Mosher Collins was the owner of the assignment hereinabove described.

That James D. Collins, the husband of Julia Mosher Collins, and the father of Julia C. Collins, has no right, title nor interest in and to said assignment of mortgage, as above set forth, for the reason that he has received his distributive share of the estate of Julia Mosher Collins, deceased, by accepting payments of funds from the separate estate of

said Julia Mosher Collins, deceased, in full satisfaction of all his right, title and interest in and to said note and mortgage herein set forth, which said payments were made to the said James D. Collins after the death of Julia Mosher Collins the mother of the defendant Julia C. Collins.

That the defendant Julia C. Collins under and by virtue of [14] the laws of descent and distribution and by reason of the payments to the said James D. Collins out of the proceeds of the separate estate of Julia Mosher Collins, was at all times material hereto the owner of the aforesaid first mortgage, which has now been foreclosed, as hereinafter alleged, vesting title in the defendant Julia C. Collins, in fee simple.

VI.

Answering Paragraph VI of plaintiffs' complaint defendants admit that the said Elsie B. Ganz executed a purported deed of conveyance to the plaintiffs herein but allege that the purported deed contained many restrictions.

VII.

Answering Paragraph VII of plaintiffs' complaint these defendants deny that these plaintiffs ever took possession under the purported conveyance, or that they have ever been in possession of the said premises under the purported conveyance from Elsie B. Ganz, and deny that they are now in possession thereof. In this connection these defendants

allege that on the 17th day of September, 1931, the defendant, Hattie L. Mosher, entered into a written lease with the O'Connell Brothers, Inc., a corporation, for the premises described in Paragraph I of plaintiffs' complaint for a term of five years from October 1st, 1931; with possession given immediately on the signing of the said lease; at a monthly rental of Seventy Five Dollars (\$75.00), payable in advance, with the option to renew said lease for an additional two years at a monthly rental of One Hundred Dollars (\$100.00), and a clause that rent was to be paid so long as occupied.

That in addition to the monthly rental in said lease, the O'Connell Brothers, Inc., a corporation, agreed to pay all taxes, assessments and new improvement assessments levied against said above described premises from October 1st, 1931, until lease ended. [15]

Further answering Paragraph VII of plaintiffs' complaint the defendants deny that the plaintiffs have complied with any provision of the Code of 1928, and amendments thereto, or any subsequent enactment of the legislature of Arizona, entitling them to a decree quieting the title in the plaintiffs to the property described in paragraph I of their complaint, and particularly allege that they have failed to pay the taxes assessed against said property for at least five (5) consecutive years next preceeding the institution of their action, and allege further, to-wit:

That plaintiffs have attempted to bolster their

claims by entering into a conspiracy with the Assessor of Maricopa County, Arizona, to complete the Five Year Period of Tax Paying under which they appear to claim title in Paragraph VII of their complaint by procuring the said Assessor to continue the assessing of the said property in the name of Joe O'Connell.

That Plaintiffs attempted to enter into a similar conspiracy with the Assessor of the City of Phoenix, Arizona, but failed in their attempt.

Further, these defendants allege that the defendant, Julia C. Collins, was an infant at the time of the death of her mother, Julia Mosher Collins, May 4, 1920, and that said defendant was still an infant in 1934 when plaintiffs allegedly took possession of the premises in dispute and that Five (5) Years have not elapsed since said defendant, Julia C. Collins, reached the age of twenty-one (21) years, thus coming of age.

VIII.

Answering Paragraph VIII of plaintiffs' complaint the defendants admit that Julia C. Collins claims some interest in the property described in Paragraph I of plaintiffs' complaint and allege that:

February 24, 1913—J. Gerard, the then owner of Lots 1 & [16] 2, Block 3, Churchill Addition to Phoenix, Arizona, sold the said lots to the Greene & Griffin Real Estate and Investment Company, a corporation, of Phoenix, Arizona, and took as part pay-

ment therefor a mortgage and note for \$9,000.00 from the said Greene & Griffin.

February 24, 1913—Date of the mortgage for \$9,000.00 executed by the Greene & Griffin Investment Company, a corporation, to J. Gerard. Recorded May 29, 1913, in Book 85, of Mortgages, on Page 303.

July 1, 1914—The said Greene & Griffin sold the said lots to Hattie L. Mosher, a widow, subject to the mortgage for \$9,000.00. Recorded in Book 110, of Deeds, at Page 179.

October 7, 1918—The said \$9,000.00 mortgage was extended to a further period of approximately ten (10) years, namely to February 24, 1928. This Extension was recorded in Book 114, of Mortgages, at Page 361.

October 7, 1919—J. Gerard sold the said mortgage to Julia Mosher Collins, receiving therefor the sum of \$9,000.00, cash, from the said Julia Mosher Collins, the mother of the defendant herein, Julia C. Collins, at which time the said J. Gerard executed and delivered to the said Julia Mosher Collins an Assignment of the said mortgage, which was immediately placed of record in Book 7, of Assignments of Mortgages, at Page 159, thereof.

All instruments set forth in this paragraph being of record in the Office of the Recorder of Maricopa County, State of Arizona.

Defendants further allege that May 8, 1935, that Julia C. Collins, by and through her Guardian ad litem, filed a Complaint for foreclosure of the said

\$9,000.00 mortgage in the District Court of the United States, District of Arizona, the same being Equity—319. That a Second Amended Complaint was filed December 30, 1935. It is further alleged that for the purpose of giving Actual Knowledge, in addition to the Constructive Knowledge they [17] already had by and through the Official Records of the Office of the Recorder of Maricopa County, Arizona, Joe O'Connell and Jessie B. O'Connell, his wife, were made party defendants in Equity—319. Plaintiffs further allege that as the said Joe O'Connell held his purported title under Elsie B. Ganz, who held a purported Sheriff's deed in the Action in the Superior Court of Maricopa County, State of Arizona, numbered 35462, therein, in which Elsie B. Ganz had proceedings to foreclose her Second Mortgage against the property set forth in the action at bar, and whereas the said Elsie B. Ganz had not made Julia C. Collins, the owner and holder of the First Mortgage, a party defendant, in No. 35462, the said Joe O'Connell and wife were not proper parties in the Foreclosure Proceedings set forth in Equity 319 and were dismissed therefrom.

That the said Joe O'Connell and wife drew down the \$5.00 deposit remaining with the Clerk of the Court, that they had advanced, and that although the Decree against Hattie L. Mosher had been signed July 20, 1936, by the Judge of the Court, and the final Judgment of Foreclosure signed by the judge December 28, 1936, and over a month had elapsed since the dismissal of O'Connell and wife,

before the Final Judgment was signed, they made no effort to intervene, or again install themselves in the action, as was their legal right, did they consider that they had any interests in the disputed property foreclosed by Julia C. Collins under her lien.

That the Judgment was filed January 11, 1937 and thereafter, January 20, 1937, a Transcript of this judgment, certified by the Clerk of the United States District Court, District of Arizona, was filed and recorded in Judgment Book 1, at Page 288, of Judgments, in the Recorder's Office of Maricopa County, Arizona.

These defendants further allege that after six months had expired after the filing of the judgment in Equity 319, namely February 13, 1939, and given by the Clerk of the Court an Execution of Judgment

[18]

and Order of Sale in Equity 319, was obtained, and acting thereon, the Special Master, appointed by the Court in the Judgment filed January 11, 1937, advertised and posted the property for sale, and March 17, 1939, the property was sold to Julia C. Collins. March 19, 1939 the Special Master filed his Return on Order of Sale and Writ of Execution. March 31, 1939, the Order Confirming sale was signed by the Judge of the Court. March 31, 1939, the Special Master executed the Special Master's Certificate of Sale on Foreclosure, and the same day, March 31, 1939, this said Certificate was placed of record in Book 57, of Miscellaneous Records, at Page 549. Thereafter, after the Six Months Period of Redemption had expired and no Notice to Re-

deem had been filed, namely, October 2, 1939, a Deed of Special Master was executed by the duly appointed Special Master, to Julia C. Collins, for the premises set forth in the instant case, and the same day, October 2, 1939, the said deed to Julia C. Collins was recorded in Book 337, of Deeds, at Pages 148 and 149. That the Correct amount of Revenue Stamps were placed thereon and cancelled by the Special Master in the presence of the Notary.

Defendants further allege that the deed from Elsie B. Ganz to Joe O'Connell, recorded in Book 283, of Deeds, at Page 192, thereof, was subject to the following exceptions:

All State, County, and City real and personal taxes.

Street Paving Lien.

The rights of O'Connell Brothers under their lease.

A certain judgment against Hattie L. Mosher.

Defendants further deny that any of said proceedings in the United States District Court, for the District of Arizona, were had in order to cloud the plaintiffs' title and in this connection allege that said proceedings, as brought and maintained by the Guardian ad litem of Julia C. Collins, were had in order to foreclose the mortgage held by the defendant Julia C. Collins and vest the [19] title in her and she is now the lawful owner of said premises in fee simple as evidenced by the various instruments leading up to, and including, the deed to her by said

Special Master issued in Cause in Equity No. 319, in this court.

IX.

Answering Paragraph IX of plaintiffs' complaint these defendants deny that the plaintiffs were damaged in any manner by the lawful acts of the Guardian ad litem of Julia C. Collins, or by the lawful acts of these defendants, or either of them, and deny that plaintiffs are entitled to any damages whatsoever against these defendants, or either of them.

Wherefore, defendants pray the plaintiffs take nothing by their complaint and that these defendants go hence with their costs and accruing costs and interest thereon.

PLATT, HENDERSON, WAR-
NER & CRAM,

By WILBER HENDERSON,
Attorneys for Defendants.
1115 Porter Building,
Portland, Oregon.

E. E. SELDEN,
612 Luhrs Tower,
Phoenix, Arizona.

Local Associate Attorney for
Platt, Henderson, Warner
& Cram

Received copy of within instrument this 7th day
of March, 1941.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE & COOL-
IDGE,

Attorneys for Plaintiff. [20]

(Duly Verified.)

[Endorsed]: Filed Mar. 7, 1941. [21]

[Title of District Court and Cause.]

MOTION FOR SUPPLEMENTAL ANSWER
AND NOTICE THEREOF

Comes now the Defendant, Julia C. Collins, and
moves the Court for permission to file a proposed
Supplement to the Amended Answer. Said proposed
Supplement to the Amended Answer is annexed
hereto and made a part hereof.

PLATT, HENDERSON,

WARNER & CRAM,

11th Floor, Porter Building,
Portland, Oregon.

Attorneys for Julia C. Collins
of Portland.

By E. E. SELDEN,

Sixth Floor, Luhrs Tower,

Local Associate Attorney for
Julia C. Collins in Phoenix,
Arizona.

NOTICE

To Joe O'Connell and Jessie B. O'Connell and J. L. Gust, for their Attorneys;

You and each of you will please take notice that the foregoing Motion to which is attached the proposed form of supplement to the Amended Answer will be filed and thereby submitted to the Court for his decision in due course as provided by law.

E. E. SELDEN,
Local Associate Attorney for
Julia C. Collins.

ORDER

It is hereby ordered that the Defendant, Julia C. Collins, is permitted to file the Supplement to the Amended Answer, a copy of which, and the Notice therefor, have been duly served, and Plaintiff having the usual time to reply thereto.

Done in Open Court March . . . , 1941.

.....

Judge.

Received copy of above Motion, Notice, and Order,
March 17th, 1941.

By J. L. GUST,
Attorneys for Joe O'Connell
and Wife. [22]

[Title of District Court and Cause.]

SUPPLEMENT TO AMENDED ANSWER

Comes now the Defendant, Julia C. Collins, and for an Additional Answer Supplementary to her Amended Answer in the above entitled cause alleges:

That the Assignment from Julia Mosher-Collins to James Dean Collins executed on the 1st day of March, 1920, and recorded in the Office of the Recorder of Maricopa County, Arizona, in Book 8, of Assignments of Mortgage, on Page 372, was filed and recorded at request of Hattie L. Mosher April 18, 1921, at 1:11 P.M. over a year subsequent to its Execution and approximately a year after the death of Julia Mosher-Collins, and:

That the said Assignment was never delivered to James Dean Collins, and:

That the said Assignment was executed without the knowledge of Julia Mosher-Collins, the principal of Hattie L. Mosher, and:

That neither the Assignor nor the Assignee had knowledge of the Assignment.

This Defendant, Julia C. Collins, further alleges that the consideration of \$9,000.00 paid by Julia Mosher-Collins to J. Gerard for the Assignment of Mortgage recorded in Book 7 of Assignments of Mortgage, on Page 159, was purchased with the separate funds of the said Julia Mosher-Collins, accumulated prior to her marriage to James Dean Collins, when she was Julia Winifred Mosher. [23]

That this Defendant, Julia C. Collins, had no

knowledge of the matters and things alleged in this supplemental answer at the time the Amended Answer in this cause was filed.

This Answer is merely supplementary to the Amended Answer heretofore filed by Julia C. Collins and does not purport to take the place of the Amended Answer nor to waive any of the matters contained in said Amended Answer.

PLATT, HENDERSON,
WARNER & CRAM,
11th Floor, Porter Building,
Portland, Oregon.
Attorneys for Julia C. Collins
of Portland.

By E. E. SELDEN,
Sixth Floor, Luhrs Tower,
Phoenix, Arizona.
Local Associate Attorney for
Julia C. Collins.

(Duly Verified.)

Received copy of the above Supplement to
Amended Answer March 17th, 1941.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,
J. L. GUST,
Attorneys for the Plaintiff.

[Endorsed]: Filed Mar. 17, 1941. [24]

In the United States District Court for the
District of Arizona

April 1941 Term at Phoenix

Minute Entry of
MONDAY, APRIL 7, 1941
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

Present: Wm. H. Loveless, Chief Deputy Clerk;
Gwen J. Ballard, Deputy Clerk—Misc. Court is now
duly opened according to law.

[Title of Cause.]

This being the time heretofore fixed for trial setting or other disposition, this case is now regularly called pursuant to notice to counsel.

J. L. Gust, Esquire, appears as counsel for the plaintiffs, E. E. Selden, Esquire, appears as counsel for the defendants, and on stipulation of respective counsel,

It is ordered that this case be passed on the calendar.

In the United States District Court for the
District of Arizona

April 1941 Term at Phoenix

Minute Entry of
MONDAY, JUNE 16, 1941
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

Present: Edward W. Scruggs, Clerk—Misc. Court is now duly opened according to law.

[Title of Cause.]

Motion of defendant Julia C. Collins for Leave to File Supplemental Answer, having been submitted and by the Court taken under advisement,

It is ordered that said motion be granted, and

It is further ordered that this case be and is set for trial Tuesday, September 16, 1941, at ten o'clock a. m. [25]

In the United States District Court for the
District of Arizona

April 1941 Term

at Phoenix

Minute Entry of

TUESDAY, SEPTEMBER 16, 1941
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

Present: Wm. H. Loveless, Chief Deputy Clerk—Misc. Court is now duly opened according to law.

[Title of Cause.]

This case comes on regularly for trial this day before the Court sitting without a Jury.

John L. Gust, Esquire, appears as counsel for the plaintiffs. E. E. Selden, Esquire, appears as counsel for the defendants. Plaintiff Joe O'Connell, is present, and defendant Hattie L. Mosher, is present.

Louis L. Billar is present as Court reporter.

Both sides announce ready for trial.

On stipulation of respective counsel,

It is ordered that the following exhibits be admitted in evidence:

Plaintiffs' exhibit 1, Complaint

2, Sheriff's Deed

3, Warranty Deed

4, Realty Mortgage

5, Tax receipts

Defendants' exhibit A, Certified copies of deeds

B, Picture

C, Picture

D, Certified copies of records in E-319 Phx.

Plaintiffs' Case:

The plaintiff, Joe O'Connell, is now duly sworn and examined in his own behalf.

Whereupon, the plaintiff rests. [26]

Defendants' Case:

The defendant, Hattie L. Mosher, is now duly sworn and examined in her own behalf.

Defendants' exhibit E, Certified copy of letter and transfer, is now admitted in evidence.

And the defendants rest.

Both sides rest, and

It is ordered that this case be submitted on briefs and by the Court taken under advisement, and that defendants be allowed thirty days in which to file brief and that plaintiffs be allowed 10 days thereafter in which to reply.

In the United States District Court for the
District of Arizona

October 1941 Term

at Phoenix

Minute Entry of

THURSDAY, DECEMBER 18, 1941
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

Present: Wm. H. Loveless, Chief Deputy Clerk—
Misc. Court is now duly opened according to law.

[Title of Cause.]

It is ordered that judgment be entered for the plaintiffs herein. [27]

In the United States District Court for the
District of Arizona

October 1941 Term

at Phoenix

Minute Entry of

WEDNESDAY, JANUARY 7, 1942
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

[Title of Cause.]

It is ordered that plaintiffs' Proposed Findings of Fact and Conclusions of Law be approved and adopted, and that the form of judgment, heretofore proposed by plaintiffs, be filed, entered and spread upon the minutes as the judgment in this case, as follows: [28]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT QUIETING TITLE

Come now Joe O'Connell and Jessie B. O'Connell, husband and wife, plaintiffs in the above entitled action, and present and submit for the consideration of the court proposed Findings of Fact and Conclusions of Law, and proposed Decree, attached hereto.

Dated this 26th day of December, 1941.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,

201-11 Professional Building,
Phoenix, Arizona

J. L. GUST,

Attorneys for Plaintiffs [29]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on for trial upon plaintiffs' complaint, and the amended answer of the defendants thereto, upon the 16th day of September, 1941, and the court having heard the evidence without a jury, and the cause having been submitted for consideration of the court, upon due consideration the court finds the following facts:

FINDINGS OF FACT

I.

That on the 24th day of February, 1913, J. Gerard, a widow, was the owner and in possession of that certain parcel of real estate situated in the City of Phoenix, County of Maricopa, State of Arizona, described as:

Lot Two (2) in Block Three (3) of Churchill Addition, an addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at Page 69 thereof.

II.

That on said 24th day of February, 1913, said J. Gerard, a widow, by warranty deed, recorded in the office of the County Recorder of Maricopa County, Arizona, on March 1, 1913, in Book 102 of Deeds, at page 90, conveyed the above described premises to

Greene and Griffin Real Estate and Investment Company, a corporation. [30]

III.

That thereafter on July 1, 1914, said Greene and Griffin Real Estate and Investment Company, a corporation by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on July 9, 1914, in Book 110 of Deeds, at page 179 conveyed said premises to Hattie L. Mosher, a widow.

IV.

That thereafter on March 1, 1929, said Hattie L. Mosher, a widow, executed a note for the principal sum of Six Thousand (\$6,000.00) Dollars to Elsie B. Ganz, a widow, and to secure the payment of said note said Hattie L. Mosher executed and delivered to said Elsie B. Ganz a realty mortgage on the above described premises, dated March 1, 1929, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 6, 1929, in Book 225 of Mortgages, at page 481.

V.

That said Hattie L. Mosher neglected and refused to pay said note when the same became due and thereafter, on or about the 16th day of September, 1931, said Elsie B. Ganz filed a suit against the said Hattie L. Mosher to foreclose said mortgage; and that such proceedings were had in said foreclosure suit that a judgment was regularly entered in said

suit, foreclosing the said mortgage and directing the premises therein described to be sold in satisfaction of the indebtedness represented by said note; and in pursuance of said judgment, an execution and order of sale was issued and said premises were ordered sold and were purchased by said Elsie B. Ganz, plaintiff in said suit; and that neither the said Hattie L. Mosher nor anyone else redeemed from said sale and after the time for redemption had expired, to-wit, on or about the 27th day of October, 1932, a sheriff's deed was duly issued by the sheriff of Maricopa County, Arizona, conveying the above-described premises to the said Elsie B. [31] Ganz, said sheriff's deed being recorded in the office of the County Recorder of Maricopa County, Arizona, on December 15, 1932, in Book 270 of Deeds at page 313.

VI.

That thereafter, on or about May 1, 1934, the said Elsie B. Ganz, a widow, by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on June 6, 1934, for valuable consideration, conveyed the above-described premises to the plaintiffs herein.

VII.

That plaintiffs immediately upon said conveyance last-mentioned being made, took possession of said premises under said conveyance, and ever since said date, have been in possession of said premises, claim-

ing the title thereto as against the whole world; and that such possession has been a visible and open and exclusive appropriation of said premises; and that plaintiffs since said date have paid the taxes upon the above-described premises.

VIII.

1. That at the time Hattie L. Mosher purchased said premises from Greene and Griffin Real Estate and Investment Company, she assumed a mortgage thereon, executed by Greene and Griffin Real Estate and Investment Company payable to J. Gerard, said mortgage being recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, at page 303.

2. On October 7, 1919, J. Gerard and Hattie L. Mosher entered into an agreement extending the time for the payment of said mortgage to February 24, 1928, the extension agreement being recorded on October 9, 1919.

3. On October 7th, 1919, J. Gerard assigned said mortgage to Julia Mosher Collins, daughter of Hattie L. Mosher.

4. At all times after July 20, 1915, until the death of Julia [32] Mosher Collins, Hattie L. Mosher held a general Power of Attorney from Julia Mosher Collins, dated July 20th, 1915, and recorded in the office of the County Recorder of Maricopa County, Arizona, on April 2nd, 1921.

5. During the lifetime of Julia Mosher Collins,

said mortgage was assigned by said Julia Mosher Collins, by Hattie L. Mosher, her attorney-in-fact, to James Dean Collins, husband of Julia Mosher Collins. This assignment was signed by Hattie L. Mosher as attorney-in-fact for Julia Mosher Collins, and acknowledged before a notary public as such attorney-in-fact, and delivered to the assignee by said attorney-in-fact before the death of Julia Mosher Collins, and was recorded in the office of the County Recorder of Maricopa County, Arizona, on April 18, 1921.

6. On May 4th, 1920, Julia Mosher Collins died, in the State of Oregon. One child, the defendant Julia C. Collins, and her husband, James Dean Collins survived her. Plaintiff had no knowledge of her death, and purchased said Lot 2, Block 3 of Churchill Addition, and paid full value therefor, without knowledge that Julia Mosher Collins had died before the date of the recording of said Power of Attorney.

7. On April 11, 1921, James Dean Collins executed a partial satisfaction of said mortgage. This partial satisfaction was recorded in the office of the County Recorder of Maricopa County, Arizona, on April 18, 1921.

8. On March 31, 1926, James Dean Collins, as owner of the mortgage, and Hattie L. Mosher, as mortgagee therein, executed an extension of agreement, extending the time for the payment thereof, and on the same date, James Dean Collins made an assignment of said mortgage to A. B. C. Davenport.

This extension agreement and assignment of mortgage were each recorded on April 13, 1926, in the office of the County Recorder of Maricopa County, Arizona. [33]

9. That the said mortgage was thereafter satisfied of record by the said A. B. C. Davenport by marginal notation on the record thereof, on April 26, 1929.

10. On May 8th, 1935, Julia C. Collins filed an action in this court for the foreclosure of said mortgage, against William A. Van Benchoten, as Guardian of the person and estate of Richard I. Van Benchoten, a minor, and Van Benchoten Estates, Incorporated, a corporation, Joe O'Connell and Jessie B. O'Connell, his wife. After the defendants other than Hattie L. Mosher, had filed motions to dismiss the complaint in said cause, they were dismissed therefrom at the instance of the plaintiff, and the case was proceeded with against Hattie L. Mosher, as sole defendant. A decree foreclosing said mortgage was entered pro confesso against Hattie L. Mosher, and thereafter, the purported special master's certificate of sale on foreclosure was made and a purported special master's deed conveying to Julia C. Collins the interest of Hattie L. Mosher in the premises hereinbefore described was obtained.

That said proceedings and purported special master's certificate of sale on foreclosure, and said purported special master's deed, were wholly without right, and cast a cloud upon plaintiff's title to said premises.

CONCLUSIONS OF LAW

1. That the assignment executed by Hattie L. Mosher, as attorney-in-fact for Julia Mosher Collins, of the mortgage executed by Greene & Griffin Real Estate & Investment Company, to J. Gerard, and recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, at page 303, conveyed and transferred the title and the right to satisfy and discharge said mortgage to James Dean Collins, and that said mortgage was satisfied of record by said James Dean Collins.

2. That Julia Mosher Collins, the mother of the defendant, [34] Julia C. Collins, became estopped prior to her death from questioning the assignment and transfer of said mortgage under her Power of Attorney as against the plaintiffs, who relied on the records and purchased the mortgaged property in good faith, and for value, without knowledge of any claim of mortgage thereon by reason of having placed said power of attorney and said mortgage in the control of her mother, and that said estoppel extends to the plaintiff as she claims by inheritance from her mother.

3. That the defendants, Julia C. Collins and Hattie L. Mosher, nor either of them, have any right, title, claim or interest in or to or lien upon said Lot 2, in Block 3 of Churchill Addition, an

addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps, at page 69 thereof.

4. That the purported foreclosure proceedings had in this court by Julia C. Collins, by her guardian ad litem, Coit I. Hughes, against Hattie L. Mosher, et al, being Cause Number E-319, and the special master's certificate of sale and special master's deed have no validity, and are of no force or effect as against the title of the plaintiffs in and to the premises last above described.

5. That the plaintiffs, Joe O'Connell and Jessie B. O'Connell, are the owners in fee simple of the said Lot 2, Block 3 of Churchill Addition, an addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at page 69 thereof, and are entitled to a decree settling their title to said premises, free and clear of all claim or interest in or to, or lien upon said premises claimed by or through the defendants, or either of them, and for their costs in this action.

Dated: Jan. 7, 1942.

DAVE W. LING,

Judge,

United States District Court,
for the District of Arizona.

In the District Court of the United States
District of Arizona

Civil No. 114—Phoenix

JOE O'CONNELL and JESSIE B. O'CONNELL,
husband and wife,

Plaintiffs,

vs.

JULIA C. COLLINS and HATTIE L. MOSHER,
Defendants.

JUDGMENT QUIETING TITLE

This cause came on regularly for trial on the 16th day of September, 1941, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause; evidence having been received and the trial concluded, the case was submitted to the court for its consideration by counsel for the respective parties; the court after due consideration having found the issues in favor of the plaintiffs and findings of fact and conclusions of law having been duly entered and filed herein,

It Is Ordered, Adjudged and Decreed that the plaintiffs Joe O'Connell and Jessie B. O'Connell, his wife, are the owners in fee simple of the following described premises, to wit:

Lot Two (2) in Block Three (3) of Churchill

Addition, an addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at Page 69 thereof.

It Is Further Ordered, Adjudged and Decreed That the defendants Julia C. Collins and Hattie L. Mosher have no right, title, interest, claim or demand in or to or lien upon said premises whatsoever, and that said defendants, and each of them, are hereby barred and estopped from claiming any interest in or to said premises, or any part thereof, adverse to the plaintiffs.

It Is Further Ordered, Adjudged and Decreed that the plaintiffs recover their costs herein incurred and expended in the sum of [36] thirty four and 90/100 Dollars.

Received copy of within this 26 day of December, 1941.

E. E. SELDEN,
By FRANK DYKES,
Attorneys for

[Endorsed]: Filed Dec. 26, 1941.

[Endorsed:] Filed Jan. 7, 1942. [37]

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND DISBURSEMENTS.

DISBURSEMENTS

Marshal's Fees	\$	
Clerk's Fees, filing Complaint in Superior Court of Maricopa County, State of Arizona	\$10.00	
Recorder's Fees Maricopa County, Arizona, recording Lis Pendens.....	1.00	
Docket Fee	10.00	
Examiner's Fees		
Witness Fees		
Sheriff's fees, Maricopa County, Summons	\$1.50	
mileage30—	1.80
Publication of Summons, Arizona Weekly Gazette	4.60	
Reporter's Fees, Louis L. Billar.....	7.50	
		<hr/>
Total,	\$34.90	

[Endorsed]: Clerk's Memo:

Objection (b)—Reporter's fees allowed; standing order dated Oct. 15, 1938 provides that reporter's fees may be taxed as costs for prevailing party. Objection (c)—Fees of Clerk U. S. Dist. Court, not claimed by pltf's. in this case. Atty's Docket Fee allowed under Sec. 572, Title 28, U.S.C. which is not a Clerk's fee.

Costs taxed at \$34.90 as claimed.

EDWARD W. SCRUGGS,
Clerk

By WM. H. LOVELESS,
Chief Deputy.

United States of America
District of Arizona—ss.

Harold L. Divelbess being duly sworn, deposes and says: That he is one of the attorneys for the plaintiffs in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements. That the items in the above memorandum contained are correct; that the said disbursements have been necessarily incurred in the said cause, and that the services charged therein have been actually and necessarily performed as therein stated.

HAROLD L. DIVELBESS

Subscribed and sworn to, before me, this 9th day of January, A. D. 1942.

[Seal] ETHOL FROST,

Notary Public, in and for the County of Maricopa,
State of Arizona.

My commission expires Feb. 27, 1944. [38]

To Platt, Henderson Warner & Cram, Attorneys,
of Portland, Oregon, and E. E. Selden, of
Counsel, 612 Luhrs Tower, Phoenix

You will please take notice that on Monday the twelfth day of January, A. D. 1942, at the hour of 10:00 o'clock, a. m. will apply to the Clerk of said Court to have the within memorandum of

costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,

Professional Building,

Phoenix, Arizona

By HAROLD L. DIVELBESS

Attorney for plaintiffs.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof acknowledged, this 9th day of January, A. D. 1942.

E. E. SELDEN

Attorney for defendants.

[Endorsed]: Filed Jan. 9, 1942.

[Title of District Court and Cause.]

OBJECTIONS TO COST BILL
FILED IN THIS CAUSE

1—Come Now the Defendants and object to the cost bill as filed in this cause for the following reasons:

a—That this court has no jurisdiction to allow costs incurred in the Superior Court of the County of Maricopa, State of Arizona.

b—That there is no provision for any short hand reporter in a civil case in the District Court of the United States.

c—That moreover the costs were all advanced by Julia C. Collins when she removed this cause to the Federal Court from the Superior Court of the County of Maricopa, State of Arizona.

PLATT, HENDERSON,
WARNER & CRAM,
1115-Porter Building,
Portland, Oregon,
Attorneys for the Defendants.

E. E. SELDEN, Of Counsel,
612-Luhrs Tower,
Phoenix, Arizona.

E. E. SELDEN.

Received copy of above Objections to Cost Bill,
January 15th 1942.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,

By J. L. GUST, Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 16, 1942. [39]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Come Now the Defendants and move the court to grant a new trial in the above entitled cause for the following reasons:

1—The court erred in rendering judgment in favor of plaintiffs for the reason that said judgment

is contrary to the evidence and is contrary to the law in this cause.

The undisputed evidence showed that the Assignment of Mortgage to James D. Collins was never delivered. All the circumstances corroborated the testimony of non delivery.

2—It is undisputed that Julia Mosher Collins died a year prior to the recordation of the assignment of mortgage to J. D. Collins.

The record shows that the plaintiffs had knowledge that the assignment was filed for record long after it was executed by H. L. Mosher, and that Julia Mosher Collins had no knowledge of its execution, which was an estoppel against any estoppel plaintiffs might try to claim against these defendants, or any of them. No Statement of Facts was asked for by either party in the cause.

3—The plaintiff, Joe O'Connell, admitted that he had never been in possession of the property, that O'Connell Brothers had been in possession at all times, going into possession under their lease.

4—There is also newly discovered on the part of Julia C. Collins to the effect that the power of attorney from Julia Mosher Collins to H. L. Mosher was never in the possession of H. L. Mosher after the execution thereof she having had merely an unexecuted carbon copy [40] until after the death of Julia Mosher Collins and her funeral and the return of H. L. Mosher to her home in Phoenix thereafter.

This new, and undiscovered evidence, should be made available to the defendant, Julia C. Collins, by the granting to her of a new trial.

That the undiscovered evidence by Julia C. Collins regarding this Power of Attorney is to the effect that it was to be made ready for use so that if some matter came up, after Julia C. Collins had been fully informed as to its nature, and approved of it, it could be used. That Julia Mosher Collins never had any knowledge of any intention to give an assignment of this mortgage to James D. Collins no more than had the assignee.

5—That no acceptance of this assignment of Mortgage was shown by the assignee and Julia C. Collins can prove that if any tender thereof had been made to him that he would have repudiated it.

6—That Mrs. Gans had full knowledge, through her attorney and agent, that her mortgage was a second mortgage, and it was so plead and proven.

PLATT, HENDERSON,
WARNER & CRAM
1115-Porter Building,
Portland Oregon,
Attorneys for Defendants.

E. E. SELDEN,
Of Counsel,
612-Luhrs Tower.

Received copy of above Motion for New Trial,
January 16th, 1942.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,

Attorneys for Plaintiffs,

By J. L. GUST.

[Endorsed]: Filed Jan. 16, 1942. [41]

In the United States District Court
for the District of Arizona

October 1941 Term

At Phoenix

Minute Entry of

TUESDAY, JANUARY 27, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding

Present: Wm. H. Loveless, Chief Deputy Clerk—
Misc. Court is now duly opened according to
Law.

Civ-114

[Title of Cause.]

Defendants' Motion for New Trial and Defendants' Objections to Cost Bill having been heretofore submitted and by the Court taken under advisement,

It Is Ordered that said Motion for New Trial be and it is denied and that said Objections to Cost Bill be overruled. [42]

[Title of District Court and Cause.]

AFFIDAVIT FOR APPEAL IN
FORMA PAUPERIS

State of Oregon

County of Multnomah—ss.

Julia C. Collins, being first duly sworn, upon oath doth depose and say:

That she is a citizen of the United States and in conformity with 28 USCA, Sections 832 to 836, inclusive, makes this affidavit:

That she is one of the defendants in the above entitled cause and that January 7, 1942, a judgment was rendered against her and was filed and entered; that January 16, 1942, a Motion for a new trial was filed; that January 27, 1942, an Order was entered denying defendants' Motion for a new trial; that the denial of the Motion for a new trial was within the three months previous to the filing of this affidavit;

The nature of this cause of action is that the mother of this affiant died the owner of considerable property; In the infancy of this affiant, and while her mother lay upon her death bed, the grandmother

of this affiant, purporting to act on a power of attorney, transferred a valuable mortgage owned by the mother of this affiant placing it upon record over a year after the death of the mother, which was the inheritance of this affiant; Many other points are claimed by both plaintiffs and defendants;

The grounds of the appeal are that the judgment and findings of fact in the opinion of this affiant are not in accord with the justice of this cause; [43]

That this affiant has no one from whom she can get financial assistance in the furtherance of this appeal; that she is sustaining herself as a designer of jewelry and ornaments but that the present war has made the metals with which she works uncertain of attainment; that her father affords her a home in which to live but that his health has recently become undertain and his occupation as a newspaper writer does not now afford the income from free lance work that existed before the war; that the only other available relative she has is her grandmother who has lost her entire fortune between the depression, mortgages and delinquent taxes; that the property at issue to which she feels she has first claim, is quite valuable, but is, in no way available for the expenses of an appeal, or as a basis for a cost bond on appeal; that she has no property out of which she could raise the costs of an appeal of this cause;

That her cause of action is just, that she is acting

in good faith, and that the equities of the case are that she cannot be deprived of the inheritance of the land her mother owned at the time of her death.

JULIA C. COLLINS,
Affiant.

Subscribed and sworn to before me, Wilber Henderson, Notary Public for Oregon, in and for the County of Multnomah, State of Oregon, April 20th, 1942.

[Seal] WILBER HENDERSON,
Notary Public for Oregon.

My commission expires: June 9, 1945.

[Endorsed]: Filed Apr. 24, 1942. [44]

[Title of District Court and Cause.]

AFFIDAVIT FOR APPEAL IN
FORMA PAUPERIS

State of Arizona

County of Maricopa—ss.

Hattie L. Mosher, being first duly sworn, upon her oath doth depose and say:

That she is a citizen of the United States and in conformity with 28 USCA, Sections 832 to 836, inclusive, makes this affidavit.

That she is one of the defendants in the above entitled cause and that January 7, 1942, a judgment was rendered against her and was filed and entered. That January 16, 1942, a Motion for a new trial was filed. That January 27, 1942, an Order was entered denying Defendants' Motion for a New Trial. That the denial of the Motion for New Trial was within the three months previous to the filing of this affidavit.

The nature of this cause is such that the daughter of this affiant died the owner of considerable property and with only one child, an infant when her mother died. That this grandmother had been shown a power of attorney executed by her daughter who retained it in her own possession. That this daughter, Julia Winifred Collins had bought, with her own individual money, a \$9,000.00 mortgage against the land owned by her mother, who is the grandmother of the co-defendant, Julia C. Collins. This grandmother used an existing, but undelivered, power of attorney given by the holder of the mort-

gage on her land and assigned this mortgage to her son-in-law without his knowledge. This grandmother kept the assignment in her own safety box and a year after the death of the mortgage holder put it on record. The grounds of this appeal are that the judgment and findings of fact in the opinion of this affiant are not in accord with the justice of this cause. That this affiant is in debt and has lost her property through mortgages, judgment liens, delinquent tax sales and has no one to help her out in the expenses of an appeal.

Wherefore, she prays this Honorable Court to grant her the order to prosecute her appeal to the Ninth Circuit Court of Appeals.

HATTIE L. MOSHER,

Affiant.

Subscribed and sworn to before me by Hattie L. Mosher, April 22nd, 1942.

[Seal]

JOHN D. RHYNE,

Notary Public.

My Commission Expires June 26, 1943.

[Endorsed]: Filed Apr. 24, 1942. [45]

[Title of District Court and Cause.]

PETITION, PRAYER AND ORDER

Come Now the defendants, and appellants, and
Petition for, and Pray, that:

This Honorable Court will enter an Order allow-

ing an Appeal in Forma Pauperis in the above entitled action.

PLATT, HENDERSON,
WARNER and CRAM,
By WILBER HENDERSON,
1115-Porter Building,
Portland, Oregon; and
MOAL E. GRAY,
Of Counsel,
301-Phoenix National Bank
Building,
Phoenix, Arizona.

ORDER

The Affidavits of the Defendants, and appellants, and the above Petition and Prayer by their Attorneys of Record having been read by this Court and duly considered it is now Ordered that the said defendants and appellants are hereby given the right, and permission, of this Court, to prosecute their Appeal in Forma Pauperis.

.....
Judge.

[Endorsed]: Filed Apr. 24, 1942. [46]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Joe O'Connell and Jessie B. O'Connell; and to:
Their representing attorney, John Gust:
You and each of you will please take Notice that:

Julia C. Collins, and Hattie L. Mosher, Defendants in the above styled cause, Appeal to the United States Circuit Court of Appeals, Ninth Circuit, sitting at San Francisco, from that certain judgment January 7, 1942, in favor of the above named plaintiffs, and appeal from the Order Denying a New Trial entered January 27, 1942, and from the whole thereof.

PLATT, HENDERSON,
WARNER & CRAM
By WILBER HENDERSON
1115-Porter Building Port-
land, Oregon, and
W. H. CHESTER,
Of Counsel,
Attorneys for Defendants.
Fourth Floor—Phoenix
National Bank Building,
Phoenix, Arizona.

[Endorsed]: Filed Apr. 25, 1942. [47]

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents:

That we, Julia C. Collins and Hattie L. Mosher, as principals, and the undersigned sureties, are held and firmly bound to the above set forth plaintiffs in the penal sum of \$250.00 well and truly to be paid.

For this we bind ourselves, our estates and personal representatives. The condition of this undertaking is that the plaintiffs have secured a judgment, and an Order Denying a New Trial, from us and from this we are appealing to the Ninth Circuit Court of Appeals.

Now, therefore, if the said defendants, and appellants, shall well and truly pay all sums adjudged against them in this appeal, by way of costs, then this obligation to be null and void, otherwise to be in full force and effect.

JULIA C. COLLINS,
By PLATT, HENDERSON,
WARNER & CRAM,
Of Portland, Oregon,
By WILBER HENDERSON, and
NOAL R. GRAY,
Of Counsel,
301—Phoenix National Bank
Building.
HATTIE L. MOSHER,
Principals.
ROBT J. EVANS
W. G. EVANS
COIT I. HUGHES
HATTRUDE B. HUGHES,
Sureties.

State of Arizona

County of Maricopa—ss.

The undersigned Sureties, being first duly sworn,

each for himself, and not one for the other, state that they are worth \$250.00 over and above their just debts and liabilities and property exempt from execution and liens, in Maricopa County, Arizona.

ROBT. J. EVANS

W. G. EVANS

COIT I. HUGHES

HATTRUDE B. HUGHES,

Sureties.

Subscribed and sworn to before me, Virgil King, a Notary Public, in, and for, the County of Maricopa, Arizona, by the above signed Sureties, April 24th, 1942, at 4:45 P.M.

My Commission Expires Aug. 25th, 1943.

[Seal]

VIRGIL KING

Notary Public.

[Endorsed]: Filed Apr. 25, 1942. [48]

In the United States District Court for the District
of Arizona

April 1942 Term

At Phoenix

Minute Entry of

MONDAY, APRIL 27, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, Presiding.

Civ-114

JOE O'CONNELL, et ux,

Plaintiffs,

vs.

HATTIE L. MOSHER, et al.,

Defendants.

[Title of Cause.]

The Petition of Defendants for an Order Allowing an Appeal in Forma Pauperis and the affidavits of the defendants in support thereof having been duly considered by the Court, the Court is of the opinion that such appeal is not taken in good faith, and

It Is Ordered that said Petition of Defendants for an order allowing appeal in Forma Pauperis be denied. [49]

[Title of District Court and Cause.]

CERTIFICATE OF ATTORNEY

Comes Now Noal R. Gray, who, as the local representative of Platt, Henderson, Warner & Cram, by Wilber Henderson, the answering attorneys in the above entitled action, and certifies that he presented the two Affidavits for Appeal in Forma Pauperis of Julia C. Collins and Hattie L. Mosher and the Order therefor, in his above set forth capacity, to the Honorable Dave W. Ling, the presiding judge in this District of Phoenix, on the Twenty Third day of April, 1942, and that upon such presentation the said presiding judge refused to affix his signature to the Order therein contained which would have permitted an appeal of this cause to the Circuit Court of Appeals, Ninth Circuit, in Forma Pauperis.

That immediately thereafter, on the Twenty Fourth day of April, 1942, he caused the two affidavits and the Order, unsigned, *supra*, to be filed by the Clerk of the Court in the Record of the above set forth action.

NOAL R. GRAY,
Attorney.

[Endorsed]: Filed May 1, 1942. [50]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY ON
THIS APPEAL

Come Now The Appellants On Appeal in the above styled action in which they are the defendants and give for their Statement of Points to be relied upon on appeal, as follows:

1—That the Revised Statutes of 1913, Civil Code, governs all tangible, and recorded, instruments appertinent hereto, and connected herewith.

2—That plaintiffs' Exhibit 1, The Ganz Foreclosure Suit, cannot be considered as evidence against the ownership of Julia C. Collins to Lot 2, Block 3, Churchill, as she was not a party to that suit, the culmination of which resulted in the execution of a Sheriff's deed to Elsie B. Ganz, of the said lot.

3—That the Sheriff's Deed to Elsie B. Ganz cannot be considered as evidence against the ownership of Julia C. Collins as she was not a party to the suit which resulted in this plaintiffs' Exhibit 2.

4—That plaintiffs' Exhibit 3, the deed from Elsie B. Ganz to Joe O'Connell cannot be considered as evidence against the ownership of Julia C. Collins as the only title held by the grantor was derived from a lawsuit to which Julia C. Collins was not a party.

5—That the Record and Testimony show that

if Mrs. Ganz ever had any mortgage as plead in plaintiffs' complaint, there being no evidence in the exhibits filed that any such mortgage ever existed, that it was only a second mortgage, and known to be such to Mrs. Ganz. [51]

6—That the lease to O'Connell Brothers, Defendants' Exhibit A, paper I, shows the paying taxes was assumed by them when they went into possession.

7—That the Warranty Deed from Ganz to O'Connell especially excepts paying of taxes among other exceptions. Exhibit 3.

8—That plaintiffs' Exhibit 5, certain tax receipts, show that the taxes were only paid 4½ years since the Ganz deed; that the land was variously assessed; that taxes were sometimes paid by Joe O'Connell and sometimes paid by O'Connell Brothers. That sometimes they went delinquent, before payment.

9—That defendants Exhibit E shows the conspiracy between Joe O'Connell and the Assessor to complete the 5 years of tax paying, and shows that it is a title company who is trying to quiet the title and not the purposed plaintiffs.

10—That the instruments in plaintiffs' Exhibit 4, which are not duplicated in defendants' Exhibit 4, excepting papers 2 and 3, do not comply with the law and Arizona Statutes and show on their faces that they are ineffective.

11—That the 12 instruments in Defendants' Exhibit show the fee simple ownership of Julia C.

Collins. This is Exhibit A. They show the approval of this court in papers J, K, and L.

12—Exhibits B and C, of defendants, 2 photographs, show that the possession and occupancy was by O'Connell Brothers, a corporation, as did the testimony of Joe O'Connell, himself.

13—That the certified copies of documents from Equity 319, filed March 19, 1941, by the defendants, being their Exhibit D, show the foreclosure proceedings of the First mortgage of Julia C. Collins and the correctness of all essentials thereto, properly signed by this court, and properly approved by this court, thus completing the chain of her title as begun in defendants' Exhibit A.

14—The Fourteenth point relied on is that all of the pleadings [52] in this case; all of the filed instruments pertaining thereto; all of the Minute Entries, even when an order of the court therein was against these defendants; and the testimony at the trial; one, and all, are conclusive that the purported plaintiffs should have taken nothing, and that these defendants should have prevailed and that the fee simple title shown by the filed exhibits from Equity-319 as being in Julia C. Collins should have remained undisturbed.

15—That the objections to the Cost Bill filed by the plaintiffs should be sustained and that it is against equity, law and justice to the public, at large, that the example of such a cost judgment should be permitted to stand, as it would stand, even after a reversal of a judgment allowing it.

Likewise Statements of Facts cannot be put in a judgment when not asked for by a party thereto.

16—That a Power of Attorney does not give its holder a right to deal with his own property.

Hence the Assignment of the Mortgage from Julia Mosher Collins to James Dean Collins was void, or voidable, and plaintiffs' predecessors in interest, as well as plaintiffs, were charged with notice of this fact.

PLATT, HENDERSON,
WARNER & CRAM,
By WILBER HENDERSON
Attorneys,

1115—Porter Building,
Portland, Oregon, and
W. H. CHESTER
Of Counsel, Fourth Floor,
Phoenix National Bank
Building, Phoenix, Arizona,
Attorneys for Defendants
and Appellants.

Received Copy of the above Statement of Points
for Appeal.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,
Attorneys for Plaintiffs and
Appellees, May 14th, 1942.
By J. L. GUST

[Endorsed]: Filed May 14, 1942. [53]

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME FOR
FILING RECORD ON APPEAL AND—
ORDER

Come Now the defendants and appellants in the above styled cause and respectfully move the court for an extension of time of thirty days in which to file the certified record on appeal in the Court of Appeals, up to, and including July 6, 1942.

PLATT, HENDERSON,

WARNER & CRAM,

By WILBER HENDERSON,

1115 Porter Building, Port-
land, Oregon.

W. A. CHESTER,

Of Counsel. 412 Phoenix Na-
tional Bank Building.

Phoenix.

ORDER

It is hereby ordered that the time for filing the certified copy of the Record on Appeal in the Circuit Court of Appeals, Ninth Circuit, is extended to July 6, 1942, inclusive.

Dated May 27, 1942.

DAVE W. LING

Judge

[Endorsed]: Filed May 27, 1942. [54]

[Title of District Court and Cause.]

MOTION FOR ORIGINAL EXHIBITS TO BE
USED ON APPEAL

Come Now the defendants and appellants in the above styled cause and respectfully move the court to send the Original Exhibits filed in this cause to the Circuit Court of Appeals, Ninth Circuit, for the considerations and inspections of the Circuit Judges who will preside at the Hearing of the Appeal of this cause.

PLATT, HENDERSON,
WARNER & CRAM,
By WILBER HENDERSON,
1115 Porter Building, Portland, Oregon.
W. H. CHESTER,
Of Counsel. 412 Phoenix National Bank Building.
Phoenix, Arizona.

ORDER

It is *hereby that* the Original Exhibits, and all thereof, which includes the Original Transcript, Ordered to be sent to the Circuit Court of Appeals, Ninth Circuit, the presiding judge at the trial of this action having duly considered the transcribed testimony in rendering judgment in favor of the plaintiffs herein, and the attorneys for both plaintiffs and defendants each having for their

uses in preparation of the appeal a carbon copy of said Reporter's Transcript.

Dated May 27, 1942.

DAVE W. LING

Judge

[Endorsed]: Filed May 27, 1942. [55]

[Title of District Court and Cause.]

ADOPTION OF STATEMENT OF POINTS IN
NOTICE OF APPEAL FOR APPELLATE
COURT

NOTICE

To:

The United States *States* Circuit Court of Appeals, Ninth Circuit; and

To:

Joe O'Connell and Jessie B. O'Connell; and
J. L. Gust their Attorney; and the District
Court of the State of Arizona;

You Are Hereby Given Notice that the defendants, and appellants, have adopted for their Points to be Relied Upon for their appeal the Statement of Points filed by them May 14, 1942, in this Court.

PLATT, HENDERSON,
WARNER & CRAM,
By WILBER HENDERSON.

Attorneys for Defendants.
1115—Porter Building,
Portland, Oregon.

W. H. CHESTER
Of Counsel, Fourth Floor,
Phoenix National Bank
Building. Phoenix, Arizona.

Received Copy of Above Notice June 29th, 1942.
J. L. GUST

Attorney for Plaintiffs and
Appellees.

[Endorsed]: Filed Jun. 29, 1942. [56]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD
ON APPEAL

The Clerk of this District Court is requested to make a certified Transcript of Record to be filed in the United States Circuit Court of Appeals, Ninth Circuit, containing, as follows:

- 1—The Complaint—Filed in the Superior Court of Maricopa County, State of Arizona, January 30, 1940.
- 2—Order for Removal to United States District Court, signed by G. A. Rodgers, Presiding Judge. Filed in Superior Court April 10, 1940.

- 3—Notice of Removal—Filed in Federal Court May 28, 1940.
- 4—Defendants' Amended Answer—Filed March 7, 1941.
- 5—Motion of Julia C. Collins for Supplemental Answer, Notice thereof, and Order therefor—Filed March 17, 1941, and Supplement to Amended Answer filed therewith.
- 6—Minute Entry of April 7, 1941.
- 7—Minute Entry of June 16, 1941.
- 8—Minute Entry of September 16, 1941. The Trial.
- 9—Minute Entry of December 18, 1941. Judgment for Plaintiffs.
- 10—Judgment for plaintiffs—Filed January 7, 1942.
- 11—Plaintiffs' Memorandum of Costs and Disbursements—Filed January 9, 1942.
- 12—Entry of Tax Costs for Plaintiffs at \$34.90.
- 13—Defendants' Motion for New Trial—Filed January 16, 1942.
- 14—Defendants' Objections to Cost Bill—Filed January 16, 1942.
- 15—Minute Entry of January 27, 1942. Denying Defendants' Motion for New Trial and overruling Defendants' Objections to Cost Bill heretofore submitted by Plaintiffs.
- 16—Affidavit of Julia C. Collins for Appeal in Forma Pauperis— [57] Filed April 24, 1942.
- 17—Affidavit of Defendant Hattie L. Mosher for Appeal in Forma Pauperis—Filed April 24, 1942.

- 18—Defendants' Petition for Order Allowing Appeal in Forma Pauperis—Filed April 24, 1942.
- 19—Defendants' Notice of Appeal—Filed April 25, 1942.
- 20—Defendants' Bond on Appeal—Filed April 25, 1942.
- 21—Minute Entry of April 27, 1942, denying defendants' Petition for Order Allowing Appeal in Forma Pauperis.
- 22—Certificate of Attorney—Filed May 1, 1942.
- 23—Statement of Points Upon Which Appellants Intend To Rely on This Appeal—Filed May — 1942.
- 24—Designation of Portions of Record on Appeal —Filed May — 1942. (This Paper)

Also any subsequent papers found necessary to be filed by the Defendants before the Certified Papers are sent up for Appeal by the Clerk of this Court.

PLATT, HENDERSON,
WARNER & CRAM,
of Portland, Oregon,
By WILBER HENDERSON,
Attorneys, 115 Porter Building,
Portland, Oregon, and
W. H. CHESTER,
Of Counsel, Attorneys for
Defendants and Appellants,
Fourth Floor, Phoenix National
Bank Building,
Phoenix, Arizona.

Received Copy of the above Designation of Portions of Record.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,

Attorneys for Plaintiffs and
Appellees, May 14th, 1942.

By J. L. GUST

[Endorsed]: Filed May 14, 1942. [58]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Joe O'Connell and Jessie B. O'Connell, husband and wife, Plaintiffs, versus Julia C. Collins and Hattie L. Mosher, Defendants, numbered Civil-114 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 58, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all papers filed therein, together with the en-

dorsements of filing thereon, called for and designated in the designation filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that all original exhibits in said case, to-wit: Plaintiffs' Exhibits 1 to 5, inclusive, and Defendants' Exhibits A to E, inclusive, together with the original reporter's transcript, are transmitted herewith pursuant to Order of May 27, 1942.

I further certify that the Clerks fee for preparing and certifying to this said transcript of record amounts to the sum of \$8.65 and that said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of the said Court this 2nd day of July, 1942.

[Seal]

EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS

Chief Deputy Clerk [59]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

The above entitled and numbered cause came on duly and regularly for hearing in the above entitled court before Honorable Dave W. Ling, Judge,

presiding without a jury, commencing at the hour of 10 o'clock A. M. on the 16th day of September, 1941.

The Plaintiffs were represented by John L. Gust of Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge.

The Defendants were represented by E. E. Selden.

Thereupon the following proceedings were had.

The Clerk: Civil 114, Phoenix; Joe O'Connell and Jessie B. O'Connell vs Julia C. Collins and Hattie L. Mosher.

Mr. Gust: The plaintiffs are ready.

Mr. Selden: The defendants are ready.

Mr. Gust: May it please the court, we had some little remarks the last time we tried this case on the appearances, so I would like to ask Mr. Selden who he appears for. Who do you appear for on this, Mr. Selden?

Mrs. Mosher: I think the amended answer, a copy of which was served on you, Mr. Gust, will show all the statistics in connection with it.

The Court: Who do you appear for, Mr. Selden?

Mrs. Mosher: Huh?

The Court: I am speaking to——

Mr. Selden (Interposing): I am appearing for Julia C. Collins and also (pauses)—well, for the defendant, Julia C. Collins.

The Court: And Hattie L. Mosher?

Mrs. Mosher: You are appearing for whatever you are cited for.

Mr. Selden: I am appearing for Julia C. Collins.

The Court: And not for Mrs. Mosher?

Mr. Selden: Yes, and also Hattie L. Mosher, both defendants.

Mr. Gust: I will state that there is only one complaint filed in here, but there are several [2*] answers filed. As I understand, in the pleadings before the court was a joint answer filed on March 7th, 1941, and then in addition to that a supplemental answer by Julia C. Collins filed on March 17th, 1941. Is that your understanding of it, Mr. Selden?

Mr. Selden: That is correct. There is a supplemental answer. There is an amended answer which is filed March 4th, 1941 and then there is a supplemental answer filed March 17th, 1941.

Mr. Gust: The supplemental answer, I think, is for Julia C. Collins alone.

Mr. Selden: Yes, that is correct.

Mr. Gust: There were at the former trial, a number of exhibits introduced in evidence, I think about 5, on behalf of the complainant, and I think only one on behalf of the defendant Mosher. Are there 5 exhibits in the former trial, Mr. Clerk for the plaintiff?

The Clerk: 5.

Mr. Gust: 5 for the plaintiff?

The Clerk: 5 for the plaintiff and 3 for the defendants.

*Page numbering appearing at top of page of original Reporter's Transcript.

Mr. Selden: One of these 3 here—yes, I would like to examine all of the exhibits [3] momentarily here to see if they are sufficient.

Mr. Gust: We may stipulate on the exhibits.

The Clerk: The defendant was allowed to file certified copies in the other case.

Mr. Selden: It may be stipulated that as far as—I want all of these exhibits in this present case, as well as—that is, in the present trial, that it could be stipulated in and between counsel that all of these exhibits can be now considered as being tried in this particular——

The Court: Well, they can be introduced in this case.

Mr. Gust: May it be stipulated that they all be received in this case? Now, with consent of counsel for both sides, it includes Exhibits 1, 2, 3, 4 and 5 for the plaintiffs, and 5 being two groups of tax receipts, one, State and County and one, City, and then for the defendants it includes Exhibits A, B and C and also certain certified copies of proceedings in this court filed on March 19th, which was after the trial. Now, as far as the plaintiff is concerned, we stipulate that all of them may be received in evidence now.

Mr. Selden: I would like to have them received in evidence, because I want everything in evidence in this case that was in evidence in [4] the previous case.

The Court: Well, it is all the same case.

Mr. Selden: Well, say the other trial, I might put it that way.

Mr. Gust: Then they are received?

The Court: Yes.

(Thereupon the documents were received as Plaintiffs' Exhibits 1, 2, 3, 4 and 5 in evidence.)

(Thereupon the documents were received as Defendants' Exhibits A, B, C and D in evidence.)

Mr. Gust: I will call Mr. O'Connell.

JOE O'CONNELL

was called as a witness in his own behalf, and being first duly sworn testified as follows:

Direct Examination

Mr. Gust:

Q. State your name?

A. Joe O'Connell.

Q. Where do you reside, Mr. O'Connell?

A. 3042 East Manor Drive, Phoenix.

Q. You have resided in Phoenix for a number of years? A. All my life.

Q. You have a place of business here on [5] Central Avenue, which is conducted under the name of O'Connell Brothers? A. I do.

Q. And the property that is, about which you are suing to quiet this title on in this suit is the property where the business of O'Connell Brothers is situated? A. Yes.

(Testimony of Joe O'Connell.)

Q. That property is improved? A. Yes.

Q. What improvements are thereon?

A. Well, it has a brick building on the whole lot.

Q. And it is situate in the City of Phoenix?

A. Yes.

Q. A city lot? A. Yes.

Q. Now, how long have O'Connell Brothers occupied that property?

A. I don't know exactly—some 10 or 12 years.

Q. You first went in possession of that property under a lease, did you? A. I did.

Q. From whom?

A. Mrs. Mosher.

Q. And you later purchased it? [6]

A. I did.

Q. Tell us from whom and when you purchased it? A. From Mrs. Ganz.

Q. Mrs. Arlene Ganz?

A. No, not Arlene. I think it is Mrs. Emma Ganz.

Mr. Selden: Elsie B?

A. Elsie B, yes sir.

Mr. Gust: State what was the circumstances under which you purchased the property?

A. Well, I don't know what you mean, except that I gave her so much money for it.

Q. Well, you have been originally there under a lease from Mrs. Mosher. Why didn't you continue it?

(Testimony of Joe O'Connell.)

A. Because she took title of the property through Sheriff's sale. She owned the property so I bought it from her.

Q. You mean, Mrs. Ganz did?

A. Mrs. Ganz did, yes.

Q. So after she got title through the Sheriff's sale, why, you purchased it from her?

A. I did.

Q. After that did you pay any rent to Mrs. Mosher? [7] A. I did not.

Q. You received a deed from Mrs. Ganz at the time you made the purchase? A. I did.

Q. I hand you Plaintiff's Exhibit No. 3 in this case and ask you if that is the deed that you received from Mrs. Ganz (handing document to witness)? A. Yes.

Q. After that date you paid no further rent for the property? A. That is right.

Q. You have been in possession ever since?

A. That is right.

Q. Claiming it as your own under this deed?

A. That is right.

Q. And nobody has in any way interrupted your possession there? A. No.

The Court: What is the number of that exhibit?

Mr. Gust: 3, and the date of this deed is the 1st day of May, 1934.

Q. What did you pay for the property, Mr. O'Connell?

A. I don't remember offhand, but some 17 or [8] 18 thousand dollars.

(Testimony of Joe O'Connell.)

Q. In cash?

A. Check, yes, cash.

Q. And at that time did you have any knowledge of the defendant Julia C. Collins having any claim or making any claim to this property?

A. I did not.

Q. You acquired evidence of title in the usual way when you purchased it? A. I did.

Q. And there was nothing called to your attention of *their* being any claim whatsoever on behalf of Julia C. Collins?

A. There was not.

Q. And you didn't know of any claims whatsoever except such as may have been mentioned in the deed? A. No, I did not.

Mr. Gust: There is one clause in it, your Honor, that excepting certain things like street paving lien, the rights of O'Connell Brothers under their lease and judgment against Hattie L. Mosher in favor of the Water Users some small amount.

Q. Now, handing you Plaintiff's Exhibit No. 5, consisting of two sets of tax receipts, I will ask you if you know anything about those tax [9] receipts?

A. I know that I paid them.

Q. You paid the taxes represented by those receipts and received the receipts?

A. That is right.

Q. And will you look there and see when they begin? A. This begins with 1931.

(Testimony of Joe O'Connell.)

Q. That is the State and County, and this here (indicating papers), I think, is the City, isn't it?

A. That starts in 1931, that is right.

Q. So you have paid all of the taxes, both State and County and City on this property since 1931?

A. That is right.

Q. During the first part or a portion of that time, what was your reason for paying it?

A. You mean in 1931?

Q. Yes.

A. Why, I think under the terms of the lease, I was to pay the taxes.

Q. You were to pay the taxes under the terms of the lease with Mrs. Mosher? A. Yes.

Q. And you did that as long as the lease [10] continued? A. Yes.

Q. And after you got a lease from Mrs. Ganz, what was your reason for paying it?

A. I always paid my taxes.

Q. Paid them as the owner after that date?

A. That is right.

Q. You have paid them every year since that time? A. Yes.

Q. You have never seen Julia C. Collins?

A. I have not.

Q. And Mrs. Mosher, of course, has never made any claim to this property since you got the Ganz deed? A. No.

Mr. Gust: That is all, you may cross examine.

(Testimony of Joe O'Connell.)

Cross Examination

Mr. Selden:

Q. Mr. O'Connell, is the O'Connell Brothers a corporation? A. It is.

Q. And it is duly licensed to do business in the State of Arizona? A. Yes. [11]

Q. And it has been so duly licensed ever since 1934? A. Before that.

Q. And since before that, and the lease which you speak about from Mrs. Mosher was made with the O'Connell Brothers, a corporation, was it not?

A. I don't know, I'd have to look at the lease.

Q. You don't know whether it was or not?

A. I don't know whether it is Joe O'Connell or O'Connell Brothers.

Q. And, as a matter of fact, the O'Connell Brothers, a corporation, were in possession of this property when you got the deed in 1934, were they not? A. They were.

Q. And they are still in possession, is that not true? A. Yes.

Q. And they were in possession—I mean, you don't know whether they were in possession under a lease from Mrs. Mosher in 1934 or not, is that your testimony? A. I do not.

Q. Now, in this exhibit, I believe it was the deed from Mrs. Ganz to you, Exhibit——

The Court (Interposing): It is 3, I think. [12]

Mr. Selden: Is it Exhibit 3? Well, Exhibit 3, yes—Plaintiffs' Exhibit 3. There is an exception

(Testimony of Joe O'Connell.)

here to "The rights of O'Connell Brothers, Incorporated, a corporation of Arizona, under the terms of that certain lease dated September 17th, 1931, made and executed by H. L. Mosher to said O'Connell Brothers, Incorporated, a corporation of Arizona—" Did you know that that exception was in this warranty deed at the time it was given to you, Mr. O'Connell?

A. I probably did.

Q. Then you did know at that time that the O'Connell Brothers, a corporation, had the lease from Mrs. Mosher? A. Yes.

Q. Then it is true, and this refreshes your memory, does it not, that the lease was from Mrs. Mosher to the O'Connell Brothers, a corporation?

A. That is right.

Q. So that the O'Connell Brothers, a corporation, has been in the possession—in the actual possession of that particular property since before 1934? A. That is right.

Q. And that possession has been unbroken, is that correct; their possession has been unbroken?

[13]

A. That is correct.

Q. And you, yourself, have never been in possession of that property as an individual?

A. Well, I don't know how you differentiate between O'Connell Brothers and Joe O'Connell.

Q. Well, it is a corporation, you say, existing?

A. I own the corporation.

(Testimony of Joe O'Connell.)

Q. Well, you don't own all of the stock in the corporation, do you, Mr. O'Connell?

A. Practically.

Q. But there are other stockholders?

A. Yes.

Q. And who are they, Mr. O'Connell?

A. There is Tom and Mary O'Connell.

Q. Who? A. Tom and Mary O'Connell.

Q. Tom and Harry O'Connell?

A. Mary, M-a-r-y.

Q. Tom and Mary O'Connell? A. Yes.

Q. And do you know how many shares of stock they own?

A. Yes, but I own control so it doesn't make any difference.

Q. You have control? [14]

A. That is right.

Q. But you have never considered the corporation as the same as yourself, have you, Mr. O'Connell? A. No.

Q. And you keep separate books, do you not?

A. Yes.

Q. And you make separate income tax returns?

A. Yes.

Q. And you keep your business separate from that of the corporation, do you not?

A. Yes.

Q. And you always have done that?

A. Not always. I have for some years, but not always.

(Testimony of Joe O'Connell.)

Q. You have for some years kept your business separate from the corporation? A. Oh, yes.

Q. And about how many years have you kept it separate from the corporation?

A. I can't answer that.

Q. Were you keeping it separate in 1934?

A. Yes.

Q. And you kept it separate ever since that time? A. Yes.

Mr. Selden: That is all. [15]

Redirect Examination

Mr. Gust:

Q. Mr. O'Connell, when you purchased this property, was the title made in Joe O'Connell; did you pay for it in your individual funds, or did O'Connell Brothers pay for it?

A. Individual funds.

Q. Do you know whether or not O'Connell Brothers have paid any rent to Mrs. Mosher since you got the deed from Mrs. Ganz?

A. I know they have not.

Q. They have paid rent to you?

A. They have.

Q. They have paid rent to you every year since 1934? A. Every month.

Mr. Gust: Every month. That is all.

Mr. Selden: That is all.

(Thereupon the witness was excused.)

Mr. Gust: We rest. [16]

DEFENDANTS' CASE

HATTIE L. MOSHER

was called as a witness on behalf of defendants, and being first duly sworn testified as follows:

Direct Examination

Mr. Selden:

Q. What is your name?

A. Mrs. H. L. Mosher. I live at 313 North Center Street.

Q. Did you have a daughter named Julia Winifred Mosher? A. Yes.

Q. She afterwards married Mr. J. D. Collins?

A. Yes.

Q. Is she living? A. No.

Q. When did she die?

A. May 4th, 1920.

Q. And did she die intestate? A. Yes.

Q. How many heirs did she leave?

A. She left one child, a daughter, Julia C. Collins, and a husband, James D. Collins.

Q. Now, did she give you any power of attorney [17] during her lifetime; did she give you power of attorney to handle her affairs during her lifetime?

A. Well, she made out a power of attorney and acknowledged it in Portland.

Q. Did she deliver that power of attorney to you?

(Testimony of Hattie L. Mosher.)

A. Well, she brought it down once when she was on a visit and showed it to me.

Q. Did she leave it with you?

A. No, she took it back to Portland with her.

Q. Now, did you, by virtue of that power of attorney, execute an assignment of a mortgage held by Julia C.—by Julia Winifred Mosher?

A. That was assigned—I used that power of attorney and assigned a mortgage owned by Julia Winifred Mosher to James D. Collins, her husband.

Q. Now, this instrument here seems to be Plaintiffs' Exhibit No. 4, and it has here an assignment of mortgage, and I will ask you if that is a copy of the assignment of the mortgage which you signed (handing document to witness)?

A. Yes, I am quite sure that that is a correct copy of what I signed.

Q. Did Mr. J. D. Collins know anything about the—your signing this assignment? [18]

A. No, he didn't know anything about it.

Q. Was he present when it was signed?

A. Oh, no.

Q. And what did you do with this assignment after it was made?

A. I put it in my safety box.

Q. And did you ever record that assignment?

A. No, I never recorded it for a long time. I never recorded it until after she was dead.

Q. I believe the assignment shows the date of its recordation. Do you happen to have recollection of when that was?

(Testimony of Hattie L. Mosher.)

A. I believe it was April 21st, 1921. The recordation would show on it.

Q. And you say your daughter died on what date? A. May 4th, 1920.

Q. Did you tell Mr. Collins that you were going to file this assignment for record?

A. Oh, no, I never said anything to him about it.

Q. Did you ever say anything at all to him about the assignment?

A. No, I never told him about it. He don't know about it yet.

Q. Was that assignment in your safety deposit [19] box all the time after you signed it until you recorded it?

A. Yes, it stayed there all the time.

Q. Did you tell your daughter, Julia Winifred Mosher Collins that you had made the assignment?

A. Oh, no, no, no.

Q. Do you know whether this was the separate property of your daughter Julia Winifred Mosher Collins, or whether it was community property?

A. It was separate property. It was money she had before she was married.

Q. Did she leave a will? A. No.

Q. Do you know whether James D. Collins has any interest in that mortgage at this time?

A. No, he got his money.

Q. How did he get it, Mrs. Mosher?

A. Well, I had a good many thousands of dol-

(Testimony of Hattie L. Mosher.)

lars still in my possession that I was taking care of for daughter, so after daughter died I sent it to Mr. Collins for him, so—for his share of the personal property.

Q. Do you know who has occupied Lot 2, Block 3 of Churchill Addition for the last 10 years?

A. O'Connell Brothers have occupied it under a lease from—in September—The lease is in the [20] record, up to the present time.

Q. In September of what year?

A. 1931. They went in on a 5-year lease with the privilege of two and their main payment was that they pay the taxes.

Q. In making that lease, did Mr. O'Connell tell you that he was the same thing as the corporation, or anything of that kind, when that lease was made?

A. Oh, no, no, no. His lawyer attended to that and he just got the lease—his lawyer made out the lease and submitted it to me and I said, "This lease is for a corporation?" He said, "Yes." "Well," I said, "ordinarily I don't lease to a corporation, but in this instance I am willing to lease to the corporation." It was the first time I had ever leased to a corporation.

Q. Well, was that lease ever renewed?

A. That lease carried, what you might call, a self-renewal clause, that the lease was to last until they moved out and they were to—they could have in addition to the 5 years, they could have 2 years longer, which, making—it was really a 7-year lease.

(Testimony of Hattie L. Mosher.)

Q. Have they ever moved out of possession of that particular lot? [21]

A. O'Connell Brothers have never moved out of there.

Q. Now, has your daughter, or had your grand-daughter, Julia C. Collins, been of age 5 years at this time; had your grand-daughter, Julia C. Collins been of age 5 years?

A. No, no, no.

The Court: What year was she born in, Mrs. Mosher?

A. She was born about, oh, a year or two, I don't remember exactly, before her mother died. She—When her mother died she was running, she was on her feet.

Q. You don't know the date of her birth?

A. I think it was just about then, but I was interested in my daughter and not especially in the grand-child. Some, of course.

Mr. Selden: Mrs. Mosher, I believe you filed certified copies of the record in a case in this court, wherein a Special Master deed was issued to Julia C. Collins to this particular land, is that correct?

A. There are some certified copies of exhibits that Mr. Loveless made.

Q. And I believe in this case, which was Equity 319, I believe that you also testified in [22] that case relative to the same things that you have testified to here about the separate property of your daughter, Julia Winifred Mosher, did you?

(Testimony of Hattie L. Mosher.)

A. I think that that was a judgment pro confesso. I had no defense. The complaint was correct and I had no defense. I owed the money and that was all there was to it and she owned the mortgage.

The Court: Who was the plaintiff in that case?

Mr. Selden: Who was plaintiff?

A. Julia C. Collins, by her Guardian ad Litem.

The Court: And you were the defendant?

A. I was a defendant.

The Court: Wasn't that the case in which Mr. and Mrs. O'Connell were made defendants and subsequently the case was dismissed as to them, or was that another one?

A. As I understood it, a man named Van Benschoten and the O'Connells were called the defendants with me and then the lawyer who brought the case told me that she, Julia C Collins, had not been a defendant in the Ganz foreclosure, and that the first mortgage owed no duty to the second mortgage, and I believe they were dismissed.

The Court: Well, that was an action to quiet [23] title?

A. No, that was not a suit to quiet title. That was a foreclosure on a mortgage. This is the first suit to quiet title that was ever brought, that Mr. O'Connell brought.

Mr. Selden: That is all.

Mr. Gust: Through?

Mr. Selden: Yes.

(Testimony of Hattie L. Mosher.)

Cross Examination

Mr. Gust:

Q. Mrs. Mosher, do you recall the hearing before Tom Nealon, as Referee in the Water Users' suit in the year 1919?

A. In the year 1919? I might.

Q. Do you remember your daughter was here at that time? A. Yes, my daughter was here.

Q. And testified in that hearing?

A. I believe she did.

Q. Do you remember that your grand-daughter was here at that time?

A. Well, if she and her nurse was here, she was in the care of her nurse.

Q. I will ask you if it is not a fact that while hearing was going on, your grand-daughter [24] was present in the courtroom and running around the courtroom?

A. I don't recall her being here because her mother never took her any place. She left her home with the nurse.

Q. You don't recall your grand-daughter being present in Tom Nealon's courtroom——

A. (Interposing): Well, Mr. Gust, I can't remember about that, but I have heard you talk about it about ten-thousand times. It seems to be a favorite speech of yours.

Q. Wasn't your grand-daughter 3 years old at that time in 1919? A. How old?

Q. 3 years? A. Oh, no.

(Testimony of Hattie L. Mosher.)

Q. How far was she from 3 years at that time?

A. I couldn't say, Mr. Gust. I just—She was born up at Portland and I didn't meet her until, I think—Well, I can't remember. I am sorry, the grandmother didn't take special interest in her grand-daughter.

Q. When was your daughter married?

A. My daughter was married late—I think she was married late in—late in 1914 or 1915.

Q. Are you sure it was not 1913? [25]

A. Oh, goodness, she was studying in Europe in 1913.

Q. Didn't she come back here in 1913?

A. In 1913?

Q. Yes.

A. My recollection is, Mr. Gust, that we were in Russia, in Saint Petersburg in 1913.

Q. Isn't it a fact she gave several musical recitals here in Phoenix in 1913?

A. My daughter gave recitals?

Q. Yes. A. On what?

Q. Musical recitals.

A. On what instrument?

Q. Well, I am asking you, Mrs. Mosher.

A. Huh?

Q. She was a pianist, wasn't she?

A. My daughter graduated from the Conservatory of Music at Leipsig in 1914 for Grosser Orchestra.

(Testimony of Hattie L. Mosher.)

Q. All right. Now, then, anyhow your granddaughter was here, present, in 1919 and was big enough to walk at that time?

A. I just—She might have been up on her feet. I have got a sort-of a picture she might have been up on her feet, but the nurse took care of her and there wasn't any of my occasion to say— [26] but I know that my daughter didn't take her out with her when she went out.

Q. And your daughter died in May, 1920?

A. She died May 4, 1920.

Q. Some 6 weeks before she died, you went over to Los Angeles to visit her?

A. I believe I went over to Los Angeles, I think it was 2 days before she died.

Q. Yes, and you had been over there from 6 weeks or 2 months before, hadn't you; you went over there about 3 times?

A. No, Mr. Gust. I took especial pains to look back at my bank records and my check records, because you said something about that once before, and I find from my bank records—I could not have gone without money, I find no break in the continuance of my business and no money drawn for fare or expenses until just maybe 2 or 3 days before she died.

Q. Then you saw her after you had made this assignment of mortgage to her husband?

A. Yes, I made this assignment of mortgage, I think, in April.

Q. Yes, and about the same time you, under the

(Testimony of Hattie L. Mosher.)

same power of attorney, made a conveyance of 6 very valuable lots on Van Buren Street? [27]

A. Under the same conveyance?

Q. Yes. A. No.

Q. Under the same power of attorney, I mean?

A. I never made any two pieces of property in one deed.

Q. Well, I say 6 lots, contiguous lots, being one piece of property you made in one deed, is that right?

A. In one deed with the assignment of mortgage?

Q. No, separate?

A. You are saying that I made a deed to 6 lots on Van Buren Street? I don't think—you are trying to help Mr. Strouss out, but I never made any deed to anybody for any lots on Van Buren Street or any lots anywhere in the Lount Tract.

Q. Isn't it a fact that there were 6 lots, 3 of which were alongside of Van Buren and the other 3 next to it—maybe there were 9 in the same position there, the title to which stood in your daughter's name up to her death, or about to her death?

A. Mr. Gust, if I made any deeds that are of interest in this case, I am sure that Mr. Selden, as attorney, will stipulate that you can put them in the record if you want to, certified [28] copies.

Q. Do you remember whether you made any deeds about the same time you made this assignment from your daughter to her husband some two months before she died?

(Testimony of Hattie L. Mosher.)

A. I never made anything two months before she died. I am pretty sure about that.

Q. Well, you made some deeds about the same time you made this assignment of mortgage, didn't you, under the same power of attorney?

A. I don't think so, Mr. Gust, but I would prefer, if you feel it essential, that you put the certified copies of the deeds in the record.

Q. You afterwards made affidavits that those deeds were delivered prior to your daughter's death, didn't you?

A. An affidavit that what deeds were delivered?

Q. After your daughter's death, you made affidavits to the effect that those deeds were delivered before your daughter's death?

A. I never—I just could not say, but you can put any affidavit in this record if you want to, but I know that all the things were kept in my safety box and that everybody knew it and some people said that that might constitute a delivery. I don't know, but if I wanted to borrow money and [29] if somebody wanted an affidavit signed, why, I probably signed it.

Q. Your daughter also had the title to some property on Moreland Street which you afterwards sold to Harry Fennemore, that is true, isn't it?

A. No, I am going to ask for the protection of the judge. I don't see why a lawsuit with Harry Fennemore should come into this lawsuit. If he thinks it does, he can put in anything he wants to,

(Testimony of Hattie L. Mosher.)

but I don't see why I should go into affairs that do not concern this case.

Mr. Selden: Yes, your Honor, I object to this line, to any questions about a deed to Harry Fennemore as being immaterial in this case, having no bearing on the delivery of this particular assignment in issue here; also, the previous testimony as to other deeds and other deliveries would have no bearing on this case either.

Mr. Gust: I am attempting to cross examine on the two instruments made under the same power of attorney about the same time and under similar circumstances.

The Court: Yes, I think it is proper. If you don't remember, Mrs. Mosher, just say so?

A. Well, it is something I could investigate. I can look at papers and records. [30]

The Court: I say, if you can't answer the question, just say so.

Mr. Gust: Mrs. Mosher, you state, now, that this assignment of this mortgage from your daughter to her husband some month or two before her death which was made by you under this power of attorney, was not delivered until after her death, that is your testimony here, is it?

A. I said it was never delivered either before her death or after her death, and that Mr. Collins has never seen it.

Q. Your memory is very clear on that, is it?

A. My memory is clear, because I put everything

(Testimony of Hattie L. Mosher.)

in my own safety box and kept it there. Why should I scatter things all over the country?

Q. Just about the same time that you made this assignment, you also made a deed from your daughter to her husband on a lot or, perhaps, two lots on Moreland Street, which you purported to make under the same power of attorney, and you put that deed in the same safety deposit box, didn't you?

Mr. Selden: Just a minute. I want to renew my objection as to that, on the ground it is immaterial; does not have any bearing on the delivery on this particular deed. [31]

The Court: You may answer.

Mr. Selden: Or particular assignment.

The Witness: I owned at one time considerable property in East Evergreen. Are you talking about the lots that Doctor Hughes got tax title to?

Mr. Gust: No, I am talking about the lots that Harry Fennemore afterwards bought?

A. I can't remember one thing about those lots.

Q. You don't remember anything about them?

A. I don't remember anything about those.

Q. You do remember that they stood in your daughter's name at the time of your daughter's death, don't you, of record?

A. They were put in my daughter's name?

Q. Is that right?

A. Oh, my daughter, any of the property she owned in East Evergreen, she had bought years and

(Testimony of Hattie L. Mosher.)

years before with some money that, oh, I think her Grandpa Mosher gave it to her.

Q. And after she died you caused your son-in-law, the widower of your daughter, to deed that property to Harry Fennemore, didn't you?

Mr. Selden: Just a minute, I object to that as being immaterial whether she caused her son-in-law to deed something to Harry Fennemore. I don't [32] see the relevancy of that.

The Court: She may answer.

A. Why, I can't remember anything about it. If you want to adjourn the trial and have me hunt up the date, but I can't remember anything about that.

Mr. Gust: There was other property on Van Buren Street that stood in your daughter's name and you made mortgages on that in your son-in-law's name after your daughter's death, and you received the money personally, didn't you?

Mr. Selden: I object to that, your Honor, also being irrelevant and incompetent.

The Court: She may answer.

A. I remember being blackmailed and hounded into the signing of a mortgage by yourself and old man Dye, but I never received one penny for it. I was frightened and threatened if I did not sign that mortgage without receiving any money, then another mortgage would be foreclosed.

Mr. Gust: No, but, didn't you receive——

A. (Interposing): I——

Q. (Interposing): Didn't you receive \$60,000.00 for a mortgage from old man Dye?

(Testimony of Hattie L. Mosher.)

A. I had a mortgage on some Center Street property to Dye. [33]

Q. And you mortgaged it for \$60,000.00, didn't you?

A. I could not say that.

Q. And title to that property——

A. (Interposing): Mr. Gust, can I ask you a question? You have filed a lawsuit against me regarding that property. Are you trying to try your lawsuit in Judge Ling's court instead of trying it in Division 1 in the Superior Court of Maricopa County in the State of Arizona?

Q. I will ask you the questions, Mrs. Mosher. Isn't it a fact that prior to your daughter's death, you, under the power of attorney you held from your daughter, conveyed several properties to her husband and that after she passed away you, through getting deeds from her husband, or mortgages, mortgaged or sold all of that property claiming—and made affidavits that those deeds were delivered before your daughter's death?

A. I think you are mistaken, Mr. Gust.

Mr. Selden: The same objection, your Honor.

The Witness: I have no recollection of making affidavits for that.

Mr. Gust: Don't you remember in the Superior Court, Mrs. Mosher, when you testified on a certain affidavit that Mr. Stallcup had prepared that [34] pertained to that matter?

A. You will have to tell me what case you are talking about in the Superior Court.

(Testimony of Hattie L. Mosher.)

Q. Well, that was the case of—Well, Mr. Claude Dye was one of the parties and Collins was one of the parties. It was Collins against Dye. You recall testifying before Judge Rodgers about a certain affidavit that Mr. Stallcup had prepared?

A. I have a recollection that Mr. Stallcup stole an abstract from me and stole \$50.00 from me. That is all I recollect in connection with Mr. Stallcup is, that he stole \$50.00 from me and stole an abstract from me, and I recollect that Mr. Coggins told me that after you—that after Dye had collected some \$75.00 or \$100.00 in court, that he came down to him and made him pay it over again, and I remember telling him if he wanted to—if Dye wanted to collect first and had such an excellent attorney that he could collect twice, I didn't see how it concerned me. That was a thing between Mr. Coggins and Mr. Dye.

Q. Well, Mrs. Mosher, you testified here that at the time of your daughter's death, you had in your possession considerable money belonging to your daughter? [35]

A. I did have.

Q. You were handling her property and affairs here prior to her death, were you not?

A. Well, Mr. Chalmers, Louis Chalmers handled her investments and arranged about notes where she loaned out money, and things like that, and then at the time she died there was considerable money here that belonged to her.

Q. Yes, how did she get that money?

A. How did she get that money?

(Testimony of Hattie L. Mosher.)

Q. Yes.

A. Did you ever hear of the Lounts—of the Lounts and the Moshers being poor people until after Mr. Gust and Mr. Dye got their fangs on them?

Q. All right. That money was derived by her from her property here? A. From what?

Q. From her property?

A. Money derived from her property? No. She had money from her Grandfather Mosher.

Q. And you were handling it for her, weren't you?

A. Well, I handled it through the advice of Mr. Chalmers, and I had money coming, a good many thousands of dollars was coming to her from the City Ice Delivery Company. She loaned her money [36] on notes to the City Ice Delivery Company and she loaned some on notes to her uncle, W. B. Lount.

Q. What I want to know is, how come it to be paid to you? A. What was?

Q. How this money came to be paid to you?

A. Why, I was the surviving partner of the City Ice Delivery Company.

Q. Isn't it a fact that she gave you power of attorney in 1915 so you could handle her business here?

A. She gave me the power of attorney, I presume, because I told her to, so if anything came up about the property or anything when she was away, that it could be attended to. She was in Oregon. I was here.

Q. That was in 1915 she did that?

(Testimony of Hattie L. Mosher.)

A. The date is on the power of attorney. You filed it yourself.

Q. And you had it ever since that time, didn't you?

A. That power of attorney?

Q. Yes.

A. I have had that power of attorney and have it yet, the original.

Q. You have had it ever since 1915? [37]

A. Yes, sometime, I believe in the Summer of 1915, in July.

Q. And it was under that power of attorney that you purported to make this assignment of mortgage from your daughter to her husband?

A. Yes, unquestionably.

Q. And did you tell Mrs. Ganz about that mortgage having been assigned and the assignment not delivered at the time when you made the mortgage to Mrs. Ganz?

A. I never saw Mrs. Ganz. I dealt with her agent and attorney, Joe Alexander. Joe Alexander called me up and wanted me to come down to his office and told me that he had some money to lend and would I take it, and I did.

Q. Joe Alexander has been dead a good many years?

A. I just don't know when he died, or about it.

Q. You know he is not living now?

A. I think he is not, but I can't keep track of people. I haven't had any occasion——

Q. (Interposing) Now, this assignment of mort-

(Testimony of Hattie L. Mosher.)

gage which is contained here in Plaintiffs' Exhibit 4 recites—"That I, Julia Mosher Collins, married, the party of the first part, for and in [38] consideration of the sum of \$9,000.00, to me in hand paid by my husband, James Dean Collins, commonly known as 'Dean Collins', the party of the second part, the receipt whereof is hereby acknowledged—" Will you verify that by looking at it? (Handing document to witness.) That is correct, isn't it?

A. If it reads that way, it surely is correct.

Q. And you signed that, containing that recital, "Julia Mosher Collins by Hattie L. Mosher, her attorney in fact," isn't it?

A. That is an authentic instrument, I am quite sure. I will see who it is certified to. Some of your certified documents, I noticed, are not correct, but where is the certificate? (Looking over documents.) "Marie Risser", I just don't know her. That is what I signed, Mr. Gust, and while I have never taken your copy down to compare it, I would say that they have compared it very carefully. I have never disputed those certified copies. The only thing is, I said, you put some extraneous matter on the mortgage that was not——

Q. (Interposing) You acknowledged that instrument before J. B. Woodward on the 1st day of [39] March, 1920, didn't you?

A. Yes, I put my personal acknowledgment on it.

Q. On that date?

A. I signed it, I signed this instrument.

(Testimony of Hattie L. Mosher.)

Q. Judge Woodward has been dead a good many years?

A. Judge Woodward died in 1924 at the age 101 years.

Q. I thought you used to say it was 107, Mrs. Mosher? A. Huh?

Q. I thought you used to say it was 107?

A. 101, but his wife didn't know it.

Mr. Gust: I think that is all.

Redirect Examination

Mr. Selden:

Q. Mrs. Mosher, at the time that you procured the Ganz mortgage, you say you had a conversation with Mrs. Ganz's attorney?

A. Yes, with Joe Alexander I had a conversation.

Q. In that conversation was anything said about this Greene and Griffin to Gerard mortgage?

A. To this what?

Q. About the mortgage, was anything said [40] about this first mortgage?

A. Oh, I furnished him with the abstract. He had the abstract in his possession and we spoke about that Gerard mortgage and he said, "Of course," he says, "I understand that this is a second mortgage, but," he says, "I do not loan money on security that is mortgaged. I loan it on the promissory note of someone I know," and, of course, at that time my promissory note was good for a good many hundred thousands of dollars.

Mr. Selden: I think that is all.

(Testimony of Hattie L. Mosher.)

Mr. Gust: Just one question; Your daughter died in Los Angeles, didn't she?

A. My daughter died in Los Angeles.

Q. And was buried there?

A. I don't remember, Mr. Gust.

Q. Anyhow, her body was not brought to Arizona for burial?

A. Her body was not brought to Arizona, that, I know.

Mr. Gust: That is all.

Mr. Selden: I want to ask the witness one question, your Honor, I would like to ask you a question, Mrs. Mosher, then may I continue the examination? I want to ask Mrs. Mosher one question.

(Thereupon Mr. Selden and the witness hold an [41] inaudible conference.)

Mr. Selden: I think that is all.

(Thereupon the witness was excused.)

The Court: Do you have anything else?

Mr. Selden: No—Will you take the stand again, Mrs. Mosher?

HATTIE L. MOSHER

resumed the witness stand and testified further as follows:

Redirect Examination

Mr. Selden:

Q. Mrs. Mosher, when this Gerard mortgage was

(Testimony of Hattie L. Mosher.)

assigned to your daughter, how much money did she actually pay for it?

A. She paid \$9,000.00 in cash.

Q. Do you know how much cash she actually had on hand at that time?

A. She had a few thousand on hand and she borrowed the rest on her promissory note, because she had more than that much coming in on some notes from the factory and her uncle, and then she, I believe before the notes were really due, she paid the balance of the notes. It was her own money that bought that Gerard mortgage.

Q. Was there any of your money mixed in that? [42]

A. Oh, no, it was none of my money mixed in it. My money bought the lot. I bought the lot. I borrowed money and bought the lot.

Mr. Selden: I think that is all.

Mr. Gust: You say your daughter borrowed money to make up a part of this \$9,000.00 From whom did she borrow it?

A. She borrowed it on a note from the Phoenix National Bank.

Q. Did you sign that note?

A. Me? No, I don't think I signed it. I don't think I indorsed it. Her note would have been good.

Mr. Gust: That is all.

The Witness: But the arrangement was made between Mrs. J. Gerard and my daughter and Mr. Foster. I don't recall being present at the transaction.

Mr. Gust: That is all.

Mr. Selden: That is all.

(Thereupon the witness was excused.)

Mr. Gust: Is that all you have, Mr. Selden?

Mr. Selden: Yes.

Mr. Gust: Well, we have no rebuttal. If it please the court, I have prepared a memorandum on this—— [43]

Mr. Selden: Your Honor, I have one exhibit here that I would like to submit for evidence. It is a certified copy of a letter and I want to have it marked for identification Defendants' Exhibit E.

(Thereupon the document was so marked.)

Mr. Selden: I will show that to counsel (handing document to Mr. Gust), and I want to introduce that in evidence in support of a part of our answer. It concerns the payment of taxes in the name of O'Connells after this deed to Julia C. Collins was recorded.

Mr. Gust: I think that is entirely immaterial, however, it is not very long. I have no particular objections to its being received except I—it may be received.

Mr. Selden: Your Honor, it may be received in evidence?

The Court: Yes.

(Thereupon the document was received as Defendants' Exhibit E in evidence.)

Mr. Selden: We do have one other, just one statement that I would like to ask Mrs. Mosher about?

The Court: All right.

Mr. Selden: Will you take the stand again? [44]

HATTIE L. MOSHER

resumed the witness stand and testified further as follows:

Redirect Examination

Mr. Selden:

Q. In the assignment of the mortgage, Mrs. Mosher, which you executed by your power of attorney from Julia Winifred Mosher Collins to J. D. Collins, there is a recitation that a consideration of \$9,000.00 was paid by J. D. Collins, and I will ask you whether or not this money was actually paid by J. D. Collins?

A. Oh, no, no, of course not.

Mr. Selden: That is all.

Recross Examination

Mr. Gust:

Q. You testified a short time ago that he spent considerable money belonging to your daughter after her death?

A. I said that after she died, I sent him money that belonged to her to represent his share of the personal property, in order that my grand-daughter could have all of the linen and china and this mortgage and the heirlooms, in order that the grand-daughter could have all of those I gave him [45] cash. My daughter had a great many thousands of

(Testimony of Hattie L. Mosher.)

dollars worth of linens and china that she bought in Europe, and heirlooms in the family.

Q. You sent considerable money also to your grand-daughter after your daughter's death, didn't you?

A. I don't remember of ever sending my grand-daughter a penny, I am sorry to say, but I don't recall of ever sending her a penny. I sent money to Mr. Collins because he was entitled to it for his share.

Q. Did you send the \$6,000.00 that you got from Mrs. Ganz to your grand-daughter?

A. No, I did not.

Q. Did you send it to Mr. Collins?

A. I put that \$6,000.00 in my pocket and spent it. I am sorry, but I did.

Q. And you knew at the time the property was your grand-daughter's property?

A. I knew at the time that Lot 2, Block 3, Churchill, was not my grand-daughter's property.

Q. That it was, you believed it was anyway?

A. Why, I held title to that. I owned that piece of property.

Q. Yes, but there was a mortgage on it for more than it was worth, which you say belonged to [46] your grand-daughter?

A. Well, I think the property at that time was worth about \$50,000.00.

Mr. Gust: I think that is all.

The Witness: I had paid for it a great—about

(Testimony of Hattie L. Mosher.)

3 or 4 times the amount of that mortgage, I paid for it in cash.

Mr. Gust: That is all.

Mr. Selden: That is all.

(Thereupon the witness was excused.)

Mr. Gust: I have prepared a memorandum, your Honor. I am willing to submit it on memorandum. I believe counsel will submit it on memorandum unless counsel desires to argue it.

Mr. Selden: I will submit it on memorandum.

The Court: All right. How much time do you want?

Mr. Selden: I would like to have about 30 days, your Honor?

The Court: All right, you can have 10 days.

Mr. Gust: All right.

(Thereupon the trial was ended at 11:40 o'clock A. M. of the same day.) [47]

I, Hereby Certify, that the proceedings had and evidence given upon the trial of this cause is contained fully and accurately in the shorthand notes taken by me of said trial, and that the foregoing 47 typewritten pages contain a full, true and accurate transcript of the same.

LOUIS L. BILLAR,

Official Shorthand Reporter.

[Endorsed]: Filed Jun. 27, 1942.

PLAINTIFF'S EXHIBIT No. 1

In the Superior Court of the State of Arizona,
County of Maricopa.

No. 35462 B¹

ELSIE B. GANZ,

Plaintiff,

vs.

HATTIE L. MOSHER, COUNTY OF MARI-
COPA, a body politic,

Defendants.

COMPLAINT.

Comes Now the plaintiff and for cause of action
alleges:

I.

That the defendant Hattie L. Mosher is a resident of Maricopa County, Arizona; that the defendant the County of Maricopa is a duly organized County of the State of Arizona.

II.

That on or about the 28th day of March, 1928, the defendant Hattie L. Mosher for a valuable consideration executed and delivered to Elsie B. Ganz, the plaintiff herein, her said promissory note for the sum of Five Thousand Dollars (\$5000.00) due five years after date, with interest at the rate of eight percent (8%) per annum, payable quarterly, and which said promissory note is in words and figures as follows, to-wit:

Plaintiff's Exhibit No. 1—(Continued.)

“No 5424

Phoenix, Arizona, March 28th, 1928.

—Five years—after date, without grace, for value received I promise to pay to Elsie B. Ganz or order the sum of Five Thousand—Dollars in U. S. Gold Coin, with interest thereon in like gold coin, at the rate of eight per cent per annum from date until paid. Interest payable quarterly and if not so paid, to be added to the principal and become a part thereof, and to bear interest at the same rate; and if suit be brought or attorney employed to recover on this note I promise to pay attorney's fees ten per cent additional on amount found due on this note.

“All payable at First National Bank of Arizona, at Phoenix, Arizona.

HATTIE L. MOSHER.

\$5000.00, Due March 28th, 1933.

(Endorsements)

Jun 22 1928 100.00 Int. paid to 6/28/28

Dec. 26 1928 100.00 Int. paid to 9/28/28

Mar. 20 1928 100.00 Int. paid to 12-28-28

Jun 21 1929 100.00 Int. paid to Mar 28 1929

Oct 21 1929 100.00 Int. paid to June 28- 1929

Oct 21 1929 100.00 Int. paid to Sept. 28-1929

Jan 13 1930 100.00 Int. paid to Dec-28-1929

May 22 1930 100.00 Int. paid to 6/28/30

Sept 3 1930 100.00 Int. paid to 9/28/30

Jan 6 1931 100.00 Int. paid to 12/28/30

Plaintiff's Exhibit No. 1—(Continued.)

8/21/31 100.00 Int. paid to 3/28/30

8/21/31 100.00 Int. paid to 6/28/31''

III.

That in order to secure the payment of said promissory note, together with interest thereon, as provided in said note, the said defendant Hattie L. Mosher, at the same time and as a part of the same transaction executed and delivered to Elsie B. Ganz., the plaintiff herein, her said mortgage upon the following described premises, to-wit:

“Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.”

which said mortgage was conditioned for the payment of said promissory note and was duly acknowledged so as to entitle the same to be recorded, and was thereafter on the 28th day of March 1928, duly recorded in the Recorder's Office of Maricopa County, Arizona, in Book 209 of Mortgages, at pages 562 and 563 thereof. A copy of said mortgage, marked Exhibit “A” is hereto attached and made a part hereof.

IV.

That it is provided in said note, among other things, as follows:

“And if suit be brought or an attorney employed to recover on this note, I promise to pay

Plaintiff's Exhibit No. 1—(Continued.)
attorney fees 10% additional on the amount
found due on this note”

and it is provided in said mortgage, as follows:

“Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments ordinary and extra-ordinary, assessed or levied upon and against said premises, and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments or any part thereof, when due, and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or encumbrances on said premises, or to protect the title thereto in said mortgagor, or to protect the validity of this mortgage as a second lien on said premises, including the expense of search of title, shall thereupon immediately become due and payable and which said payments shall become a part of the principal sum hereby secured, and shall bear interest at the same rate per annum, payable quarterly.

But it is distinctly understood and agreed that if any sum of the principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee, according to the provisions of said note,

Plaintiff's Exhibit No. 1—(Continued.)

or this mortgage, be not paid when due, or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any of the agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case, the principal sum mentioned in said promissory note, with interest thereon, may at the election of said mortgagee, be deemed and taken to be wholly due and payable, and payment thereof may be enforced by the foreclosure of this mortgage, or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and encumbrances, as well as all other payments said mortgagee may be obliged to make for her security, as aforesaid, with interest thereon at the rate of 8% per annum, and also to pay said mortgagee as and for attorney fees in case suit is brought to foreclose this mortgage or recover on said note, 10% on the amount due plaintiff on said note or this mortgage, or in case of settlement after suit brought, but before judgment rendered, then 5% on the amount so found due at the time of settlement, and which attorney fee shall be included in the judgment rendered, and be a lien on said premises, and it is further agreed and understood that pending foreclosure proceedings the

Plaintiff's Exhibit No. 1—(Continued.)

plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof, until redemption thereof is made or a Sheriff's deed is issued therefor''.

V.

That notwithstanding said covenants and said mortgage, the defendant Hattie L. Mosher, has wholly failed, neglected and refused to pay the State and County taxes assessed against said property for the years 1927, 1928, 1929 and 1930, amounting to the total sum of Two Thousand Two Hundred Seventy-four and 72/100 (\$2274.72) Dollars, and the taxes of the City of Phoenix for the years 1929 and 1930, amounting to the total sum of Seven Hundred Eighteen and 58/100 (\$718.58) Dollars, and has allowed the same to become delinquent, for which reason the full amount of the principal sum of said note and mortgage has become due and payable, according to the covenants of said mortgage and has been so declared by the plaintiff.

VI.

This plaintiff further alleges that it is provided in said mortgage hereinbefore referred to, that in case said mortgagor, the defendant herein fails to pay said taxes, that the plaintiff may pay the same and add the amount so paid to the sum secured by the mortgage, and that the plaintiff, in order to protect her lien in said premises, did on the 15th day

Plaintiff's Exhibit No. 1—(Continued.)

of September, 1931, pay to the County Treasurer of Maricopa County, Arizona, the sum of Two Thousand Two Hundred Seventy-four and 72/100 (\$2274.72) Dollars, and to the City Treasurer of the City of Phoenix, the sum of Seven Hundred Eighteen and 58/100 (\$718.58) Dollars, for delinquent taxes assessed against said premises above described, which said taxes were duly assessed on said premises and were a lien and encumbrance legally attaching thereto.

VII.

That plaintiff was at the date of execution thereof and is now the holder of said note and mortgage before described.

VIII.

That by reason of the failure of the said defendant Hattie L. Mosher, to pay the 1927, 1928, 1929 and 1930 State and County taxes, and the 1930 personal property tax liens assessed in the name of Hattie L. Mosher, and the 1929 and 1930 taxes of the City of Phoenix, as provided in said note and mortgage, the plaintiff herein has elected to declare and has declared the whole of said promissory note, together with interest thereon, due and unpaid, to be immediately due and payable, and that there is now due the plaintiff herein upon said promissory note and mortgage the principal sum of Five Thousand Dollars (\$5000.00), with interest thereon from the 28th day of March, 1928, at the rate of Eight percent (8%) per annum, as provided in said

Plaintiff's Exhibit No. 1—(Continued.)

note and mortgage until paid, and the further sum of Two Thousand Two Hundred Seventy-four and 72/100 (\$2274.72) Dollars for State and County Taxes, and Seven Hundred Eighteen and 58/100 (\$718.58) Dollars for City Taxes., and the further sum of Twelve Dollars (\$12.00) for the foreclosure search, together with the further sum of Ten per cent (10%) of the amount which shall be found due upon said note and mortgage, as attorney fees, as provided therein.

IX.

Plaintiff further alleges that said mortgage further provides, among other things, that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same to preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a Sheriff's deed is issued therefor.

X.

Plaintiff further alleges that the defendant Maricopa County, a body politic, has or claims to have some right, title or interest in or lien upon said premises; that plaintiff alleges that any right, title or interest that said defendant has in or to said premises is subsequent to the lien of said mortgage and subject thereto.

Wherefore, plaintiff prays judgment, finding and declaring the amount due to said plaintiff upon the promissory note and mortgage hereinbefore de-

Plaintiff's Exhibit No. 1—(Continued.)

scribed, together with the amounts advanced by plaintiff herein, in payment of delinquent taxes upon said premises, together with the amount expended by said plaintiff for foreclosure search, and the attorney fees as provided in said note and mortgage, and for plaintiff's costs laid out and expended in said action, and that the amount so found to be due to the plaintiff may be adjudged to be a lien on the premises hereinafter described, and that said lien attached thereto on the 28th day of March, 1928, and that said lien is prior and superior to any right, title, interest or claim upon said premises by the defendants herein named, or either of them.

That a Receiver may be appointed herein by this Court with power to care for and maintain said premises, and to collect and receive all the rents now due or to become due, and to apply the same to the payment of the sums which shall be found due to the plaintiff on said note and mortgage.

That the usual decree may be entered directing the Sheriff of Maricopa County, Arizona to seize and sell the following described property, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

as under execution in accordance with law and the practice of this Court, and that the proceeds of the sale may be applied in payment of the amount found due to the plaintiff as aforesaid; that in case

Plaintiff's Exhibit No. 1—(Continued.)

said premises shall not be redeemed from said sale within the time required by law, that the Sheriff execute and deliver to the purchaser at said sale, a good and sufficient deed to said premises, and that the defendants herein and all persons claiming by, through or under them, be forever foreclosed of any asserted right, title or interest in and to said premises, and estopped and barred from claiming any right, title or interest in and to said premises, or any part thereof adverse to this plaintiff, and that the plaintiff may have such other and further relief as to the Court may seem meet and proper.

HENRY J. SULLIVAN,
Attorney for Plaintiff.

And for a Further and Second Cause of Action against the defendant Hattie L. Mosher, plaintiff alleges:

I.

That the defendant Hattie L. Mosher is a resident of Maricopa County, Arizona; that the defendant the County of Maricopa is a duly organized County of the State of Arizona.

II.

That on or about the 1st day of March, 1929, the defendant Hattie L. Mosher, for a valuable consideration executed and delivered to Elsie B. Ganz., the plaintiff herein, her said promissory note for the sum of Six Thousand Dollars (\$6000.00) due three years after date, with interest at the rate of eight per cent (8%) per an-

Plaintiff's Exhibit No. 1—(Continued.)
 num, payable quarterly, and which said promissory
 note is in words and figures as follows, to-wit:

“No. 5609 Phoenix, Arizona, March 1st 1929
Three years.....after date with-
 out grace, for value received, I promise to pay
 to Elsie B. Ganz or order, the sum of.....
 Six Thousand.....Dollars, with interest
 thereon at the rate of eight per cent per an-
 num, from date until paid.

Interest payable quarterly.....and if
 not so paid to be added to the principal and
 become a part thereof, and bear interest at
 the same rate, and should the interest not be
 paid when due then the whole sum of prin-
 cipal and interest shall become immediately
 due and payable, at the option of the holder
 of this note. Should suit be brought to re-
 cover on this note, I promise to pay as at-
 torney's fees ten per cent additional on amount
 found due on this note,

Principal and interest payable in U. S. Gold
 Coin. All payable at First National Bank of
 Arizona, Phoenix, Arizona.

HATTIE L. MOSHER.

\$6000.00 Due March 1st, 1932.

(endorsements)

May 31, 1929	\$120	Int. paid to 6-1-29
Oct. 21 1929	120.	Int. paid to 9-1-29
Dec. 3, 1929	120.00	Int. paid to 12-1-29
May 22, 1930	120.00	Int. paid to 6-4-30
9-3-30	120.00	Int. paid to 9-1-30

Plaintiff's Exhibit No. 1—(Continued.)

Jan. 6, 1931	120.00	Int. paid to 12-1-30
8/21/31	120.00	Int. paid to 3/1/31
8/21/31	120.00	Int. paid to 6/1/31''

III.

That in order to secure the payment of said promissory note, together with interest thereon, as provided in said note, the said defendant Hattie L. Mosher, at the same time and as a part of the same transaction, executed and delivered to Elsie B. Ganz, the plaintiff herein, her said mortgage upon the following described premises, to-wit:

“Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.”

which said mortgage was conditioned for the payment of said promissory note and was duly acknowledged so as to entitle the same to be recorded, and was thereafter on the 6th day of March 1929, duly recorded in the Recorder's Office of Maricopa County, Arizona, in Book 225 of Mortgages, pages 481 and 482 thereof. A copy of said mortgage, marked Exhibit “B” is hereto attached and made a part hereof.

IV.

That it is provided in said note, among other things, as follows:

“Should suit be brought to recover on this

Plaintiff's Exhibit No. 1—(Continued.)

note, I promise to pay as attorney's fees ten per cent additional on the amount found due on this note."

and it is provided in said mortgage as follows:

"Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments, ordinary and extra-ordinary, assessed or levied upon and against said premises and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments, or any part thereof, when due and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or incumbrances on said premises, or to protect the title thereof in said mortgagor, or to protect the validity of this mortgage as a first lien on said premises, including expenses of search of title, shall thereupon immediately become due and payable, and which payments shall become a part of the principal sum hereby secured and shall bear interest at the same rate per annum payable quarterly.

This instrument shall be void if the principal sum of said promissory note with the interest thereon and all other sums paid by said mortgagee on account of taxes, assess-

Plaintiff's Exhibit No. 1—(Continued.)

ments, liens or incumbrances and other payments made by her as aforesaid, together with interest thereon at the rate of 8 per cent per annum, shall be paid when due, but it is distinctly understood and agreed that if any sum of principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee according to the provisions of said note or this mortgage be not paid when due or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any other agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case the principal sum mentioned in said promissory note with interest thereon may at the election of said mortgagee be deemed and taken to be wholly due and payable and payment thereof may be enforced by the foreclosure of this mortgage or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and incumbrances as well as all other payments said mortgagee may be obliged to make for her security as aforesaid, with interest thereon at the rate of 8 per cent per annum, and also to pay said mortgagee as and for attorneys fees in case suit is brought to foreclose this mortgage or recover on said note and this

Plaintiff's Exhibit No. 1—(Continued.)
mortgage, or in case of settlement after suit brought but before judgment rendered, then five per cent on the amount so found due at the time of settlement, and which attorney fee shall be included in the judgment rendered and be a lien on said premises.

And it is further agreed and understood that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a sheriff's deed is issued therefor."

V.

That notwithstanding said covenants and said mortgage the defendant Hattie L. Mosher has wholly failed, neglected and refused to pay the State and County taxes assessed against said property for the years 1927, 1928, 1929 and 1930, and the taxes of the City of Phoenix for the years 1929 and 1930, and plaintiff has elected to and did declare the full amount of the principal sum of said note and mortgage due and payable according to the covenants of said mortgage.

VI.

This plaintiff further alleges that it is provided in said mortgage hereinbefore referred to that in case said mortgagor, the defendant herein, fails to pay said taxes, that the plaintiff may pay

Plaintiff's Exhibit No. 1—(Continued.)

the same and add the amount so paid to the sum secured by the mortgage, and that the plaintiff, in order to protect her lien in said premises, was compelled to and did on the 15th day of September, 1931, pay to the County Treasurer of Maricopa County, Arizona, the sum of Two Thousand Two Hundred Seventy-four and 72/100 Dollars (\$2274.72), and to the City Treasurer of the City of Phoenix, Arizona, the sum of Seven Hundred Eighteen and 58/100 Dollars (\$718.58) for delinquent taxes assessed against said premises above described, which said taxes were duly assessed on said premises and were a lien and encumbrance legally attaching thereto.

VII.

That plaintiff was at the date of the execution thereof and is now the holder of said note and mortgage hereinbefore described.

VIII.

That by reason of the failure of the defendant Hattie L. Mosher to pay the taxes hereinbefore referred to, as provided in said note and mortgage, plaintiff herein has elected to declare and has declared the whole of said promissory note, together with interest thereon, due and unpaid, to be immediately due and payable, and that there is now due the plaintiff herein upon said promissory note and mortgage the principal sum of Six Thousand Dollars (\$6000.00) with interest thereon from the 1st day of March, 1929, at the rate of Eight per-

Plaintiff's Exhibit No. 1—(Continued.)
cent (8%) per annum, as provided in said note and mortgage until paid, together with the further sum of Ten percent (10%) of the amount which shall be found due upon said note and mortgage, as attorney's fees, as provided therein.

IX.

Plaintiff further alleges and said mortgage further provides, among other things, that pending foreclosure proceedings, plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises, without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption therefor is made or Sheriff's deed is issued.

X.

Plaintiff further alleges that the defendant Maricopa County, a body politic, has or claims to have some right, title or interest in or lien upon said premises; that plaintiff alleges that any right, title or interest that said defendant has in or to said premises is subsequent to the lien of the said mortgage and subject thereto.

Wherefore, plaintiff prays judgment, finding and declaring the amount due to said plaintiff upon the promissory notes and mortgages hereinbefore described, together with the amounts advanced by the plaintiff herein in payment of delinquent taxes upon said premises, together with the amount expended by said plaintiff for foreclosure search and the attorney's fees, as provided in said notes and

Plaintiff's Exhibit No. 1—(Continued.)

mortgages, and for plaintiff's costs laid out and expended in said action, and that the amounts so found to be due to the plaintiff may be adjudged to be a lien on the premises hereinafter described, and that said lien attached thereto on the 1st day of March, 1929, and that said lien is prior and superior to any right, title, interest or claim upon said premises by the defendants herein named, or either of them.

That a Receiver may be appointed herein by this Court with power to care for and maintain said premises, and to collect and receive all the rents now due or to become due, and to apply the same to the payment of the sums which shall be found due to the plaintiff on said note and mortgage.

That the usual decree may be entered, directing the Sheriff of Maricopa County, Arizona, to seize and sell the following described property, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

as under execution and in accordance with law and practice of this Court, and that the proceeds of the sale may be applied in payment of the amount found due to the plaintiff, as aforesaid; that in case said premises shall not be redeemed from said sale within the time required by law, that

Plaintiff's Exhibit No. 1—(Continued.)
the Sheriff execute and deliver to the purchaser at said sale, a good and sufficient deed to said premises, and that the defendants herein and all persons claiming by, through, or under them, be forever foreclosed of any asserted right, title or interest in and to said premises, and estopped and barred from claiming any right, title or interest therein, or any part thereof, adverse to this plaintiff; and that the plaintiff may have such other and further relief as to the Court may seem meet and proper.

HENRY J. SULLIVAN

Attorney for plaintiff.

State of Arizona

County of Maricopa—ss.

Elsie B. Ganz, being first duly sworn, deposes and says:

That she is the plaintiff in the above entitled matter; that she has read the above and foregoing complaint, knows the contents thereof and that the matters and things therein are true of her own knowledge, except as to those matters stated upon information and belief, and as to those matters she believes it to be true.

ELSIE B. GANZ

Subscribed and sworn to before me this 16th day of September, 1931.

[Seal]

MARION E. JACQUES

Notary Public

My commission expires July 18, 1934.

Plaintiff's Exhibit No. 1—(Continued.)

“EXHIBIT A”

REALTY MORTGAGE

Know All Men by These Presents:

That Hattie L. Mosher, a widow, Mortgagor, of the City of Phoenix, Maricopa County, State of Arizona, for and in consideration of the sum of Five Thousand—(\$5,000) Dollars, to her in hand paid by Elsie B. Ganz, Mortgagee, has granted, sold and conveyed and by these presents does grant, sell and convey unto said Elsie B. Ganz, Mortgagee, that certain lot, piece or parcel of land lying and being in the City of Phoenix, County of Maricopa, State of Arizona, and particularly described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

To Have and to Hold the above described property and premises together with all the improvements and appurtenances now or that hereafter may be placed thereon, and with all rights and privileges therein or thereto in anywise belonging or pertaining, unto the said Elsie B. Ganz, her heirs and assigns *foreve*.

This conveyance is intended as a mortgage to secure the payment of a certain promissory note of even date herewith signed and delivered by the said mortgagor to the said mortgagee for the

Plaintiff's Exhibit No. 1—(Continued.)

sum of Five Thousand Dollars payable five years after date with interest thereon at the rate of 8 per cent per annum from date until paid, interest payable quarterly.

Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments, ordinary and extra-ordinary, assessed or levied upon and against said premises and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments, or any part thereof, when due and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or incumbrances on said premises, or to protect the title thereof in said mortgagor, or to protect the validity of this mortgage as a second lien on said premises, including expenses of search of title, shall thereupon immediately become due and payable, and which payments shall become a part of the principal sum hereby secured and shall bear interest at the same rate per annum payable quarterly.

This instrument shall be void if the principal sum of said promissory note with the interest thereon and all other sums paid by said mortgagee on account of taxes, assessments, liens or incumbrances and other payments made by her as aforesaid, together with interest thereon at the rate

Plaintiff's Exhibit No. 1—(Continued.)

of 8 per cent per annum, shall be paid when due, but it is distinctly understood and agreed that if any sum of principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee according to the provisions of said note or this mortgage be not paid when due or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any other agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case the principal sum mentioned in said promissory note with interest thereon may at the election of said mortgagee be deemed and taken to be wholly due and payable and payment thereof may be enforced by the foreclosure of this mortgage or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and incumbrances as well as all other payments said mortgagee may be obliged to make for her security as aforesaid, with interest thereon at the rate of 8 per cent per annum, and also to pay said mortgagee as and for attorneys fees in case suit is brought to foreclose this mortgage or recover on said note, ten per cent on the amount due plaintiff on said note or this mortgage, or in case of settlement after suit brought but before judgment rendered then five per cent on the amount so found due at the

Plaintiff's Exhibit No. 1—(Continued.)
time of settlement, and which attorney fee shall be included in the judgment rendered and be a lien on said premises. And it is further agreed and understood that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a sheriff's deed is issued therefor.

In Witness Whereof the said Mortgagor has hereunto set her hand this 28th day of March, 1928.

HATTIE L. MOSHER

State of Arizona

County of Maricopa—ss.

This instrument was acknowledged before me this 28th day of March, 1928, by Hattie L. Mosher.

[Seal]

IDA N. LOSCH

Notary Public

My commission expires Sept. 14, 1931.

Plaintiff's Exhibit No. 1—(Continued.)

(On Cover)

Compared

10290

Paged—Indexed

Realty Mortgage

From Hattie L. Mosher to Elsie B. Ganz

Dated March 28th 1928

Recorder's Office

Phoenix, Maricopa County, Ariz.

Filed and recorded at request of J. L. B. Alexander

Date Mar. 28, 1928

at 1:32 P. M.

Book 209 Mtg. pages 562-563

W. H. LINVILLE

County Recorder

By ADDIE F. MAUZY

Deputy

State of Arizona

County of Maricopa—ss.

I, W. H. Linville, County Recorder in and for the County and State aforesaid, do hereby certify that the within instrument was filed for record at 1:32 o'clock P.M., on this 28th day of March, 1928, and duly recorded in Book No. 209 of Mortgages, Records of Maricopa County, Arizona, at pages 562-563.

Witness my hand and official seal the day and year above written.

[Seal]

W. H. LINVILLE

County Recorder

By IRENE COLEMAN

Deputy

Plaintiff's Exhibit No. 1—(Continued.)

“EXHIBIT B”

REALTY MORTGAGE

Know All Men by These Presents:

That Hattie L. Mosher, a widow, Mortgagor, of the City of Phoenix, Maricopa County, State of Arizona, for and in consideration of the sum of Six Thousand... (\$6000.00) Dollars, to her in hand paid by Elsie B. Ganz, Mortgagee, has granted, sold and conveyed and by these presents does grant, sell and convey unto said Elsie B. Ganz, Mortgagee, that certain lot, piece or parcel of land lying and being in the City of Phoenix, County of Maricopa, State of Arizona, and particularly described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix, according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

To Have and to Hold the above described property and premises together with all the improvements and appurtenances now or that hereafter may be placed thereon and with all rights and privileges therein or thereto in anywise belonging or pertaining, unto the said Elsie B. Ganz, her heirs and assigns forever.

This conveyance is intended as a mortgage to secure the payment of a certain promissory note of even date herewith signed and delivered by the said mortgagor to the said mortgagee for the

Plaintiff's Exhibit No. 1—(Continued.)

sum of Six Thousand Dollars payable three (3) years after date with interest thereon at the rate of 8 per cent per annum from date until paid, interest payable quarterly.

Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments, ordinary and extra-ordinary, assessed or levied upon and against said premises and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments, or any part thereof, when due and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or incumbrances on said premises, or to protect the title thereof in said mortgagor, or to protect the validity of this mortgage as a first lien on said premises, including expenses of search of title, shall thereupon immediately become due and payable, and which payments shall become a part of the principal sum hereby secured and shall bear interest at the same rate per annum payable quarterly.

This instrument shall be void if the principal sum of said promissory note with the interest thereon and all other sums paid by said mortgagee on account of taxes, assessments, liens or incumbrances and other payments made by her as aforesaid, together with interest thereon at the rate of

Plaintiff's Exhibit No. 1—(Continued.)

8 per cent per annum, shall be paid when due, but it is distinctly understood and agreed that if any sum of principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee according to the provisions of said note or this mortgage be not paid when due or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any other agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case the principal sum mentioned in said promissory note with interest thereon may at the election of said mortgagee be deemed and taken to be wholly due and payable and payment thereof may be enforced by the foreclosure of this mortgage or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and incumbrances as well as all other payments said mortgagee may be obliged to make for her security as aforesaid, with interest thereon at the rate of 8 per cent per annum, and also to pay said mortgagee as and for attorneys fees in case suit is brought to foreclose this mortgage or recover on said note and this mortgage, or in case of settlement after *suit* brought but before judgment rendered then five per cent on the amount so found due at the time

Plaintiff's Exhibit No. 1—(Continued.)

of settlement, and which attorney fee shall be included in the judgment rendered and be a lien on said premises. And it is further agreed and understood that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a sheriff's deed is issued therefor.

In Witness Whereof, the said Mortgagor has hereunto set her hand this 1st day of March, 1929.

HATTIE L. MOSHER

State of Arizona

County of Maricopa—ss.

This instrument was acknowledged before me this 6th day of March, 1929, by Hattie L. Mosher.

[Seal]

IDA N. LOSCH.

Notary Public.

My commission expires Sept. 14, 1931.

Plaintiff's Exhibit No. 1—(Continued.)
(On cover)

REALTY MORTGAGE

From Hattie L. Mosher to Elsie B. Ganz

Dated March 1st, 1929

Recorder's Office

Phoenix, Maricopa County, Ariz.

Filed and recorded at request of

J. L. B. ALEXANDER

Date Mar. 6, 1929

at 11:27 A. M.

Book 225 Mtgs

Pages 481-482

J. K. WARD,

County Recorder.

By ADDIE F. MAUZY,

Deputy.

State of Arizona,

County of Maricopa—ss.

I, J. K. Ward, County Recorder in and for the County and State aforesaid do hereby certify that the within instrument was filed for record at 11:27 o'clock A.M. on this 6th day of March 1929 and duly recorded in Book No. 225 of Mortgages Records of Maricopa County, Arizona, at pages 481-482.

Witness my hand and official seal the day and year above written.

[Seal]

J. K. WARD

County Recorder.

By LAMAR HEDGPETH

Deputy.

Plaintiff's Exhibit No. 1—(Continued.)

“Received copy of within complaint and Summons this 16th day of Sept., 1931.

DUDLEY W. WINDES,

By HHM

Deputy County Attorney.

Entered by G. H. Austin.

[Endorsed]: Filed Sep. 16, 1931.

Indexed.

[Title of Superior Court and Cause.]

SUMMONS

The State of Arizona to

Hattie L. Mosher, County of Maricopa, a body politic, Defendants, Greeting:

You Are Hereby Summoned and required to appear in an action brought against you by the above-named plaintiff in the Superior Court of Maricopa County, State of Arizona, and answer the Complaint therein filed with the Clerk of said Court, at Phoenix, in said County, within twenty days after the service upon you of this Summons, if served in this said County, or in all other cases within thirty days thereafter, the times above mentioned being exclusive of the day of service, or judgment by default will be taken against you.

Given under my hand and the seal of the Superior Court of Maricopa County, State of Arizona, this 16th day of September, 1931.

[Seal] WALTER S. WILSON,

Clerk of the Superior Court.

By G. F. ELLSWORTH,

Deputy Clerk.

Plaintiff's Exhibit No. 1—(Continued.)

State of Arizona,

County of Maricopa—ss.

I Hereby Certify that I received the within Summons on the 16th day of September, A.D., 1931, at the hour 4:35 P. M. and personally served the same on the 17th day of September, A. D. 1931 on Hattie L. Mosher, being one defendant named in said Summons, by delivering to her, in person, in the County of Maricopa, a copy of said Summons, to which was attached a true copy of the complaint mentioned in said Summons.

Dated this 17th day of September, A. D. 1931.

J. R. McFADDEN,

Sheriff.

By JOHN FINNEY,

Deputy Sheriff.

Fees, Service	\$1.50
Copies
Travel—1 miles	\$.30
Publication
<hr/>	
Total	\$1.80

(On cover)

J. R. McFADDEN,

Sheriff.

Received Sep. 16, 1931, 4:35 P. M.

[Endorsed]: Filed Sep. 21, 1931.

Entered by G. H. Austin.

Plaintiff's Exhibit No. 1—(Continued.)

[Title of Superior Court and Cause.]

DEMURRER

Comes now the defendant Hattie L. Mosher by John W. Ray, attorney and demurs to the complaint herein and the first cause of action thereof upon the grounds and for the reason that the facts therein stated do not present a present cause of action in the plaintiff as the note copied therein and declared on is not, by its terms due until five years after March 28th 1928, its date, which has not yet elapsed.

Defendant also demurs to the second cause of action upon the ground and for the reason that the statements therein show on the face thereof that the note copied and set out in the complaint is not, by its terms, due until three years after March 1st 1929, which has not yet elapsed and the cause of action is premature, if any there be stated.

Upon these causes of demurrer defendant prays the judgment of the court.

JNO. W. RAY

John W. Ray for defendant.

[Endorsed]: Filed Oct. 6, 1931.

Entered by G. H. Austin.

Plaintiff's Exhibit No. 1—(Continued.)

[Title of Superior Court and Cause.]

ANSWER

Comes now the defendant H. L. Mosher by John W. Ray attorney, and for answer to the complaint, answering says:

(I)

To the first cause of action set out, defendant admits the execution of a note and mortgage of the kind and character described in the complaint, but she denies each and every other allegation therein contained,

(II)

To the second cause of action set out, defendant admits the execution of a note and mortgage of the kind and character described in the complaint, and denies each and every other allegation therein contained.

(III)

Further answering the second cause of action defendant says that on September first 1931, defendant paid and the plaintiff accepted as payment on such note the sum of one hundred and twenty dollars, which is not credited on the note and in the complaint, and for that sum and amount she is entitled to credit.

(IIII)

For further answer to each and both paragraphs defendant says that at the date and time of the exe-

Plaintiff's Exhibit No. 1—(Continued.)

cution and delivery of each of the notes and the mortgages herein sued on, there was a delinquency of taxes due on the property and that that fact was known to the plaintiff; that at that time the defendant was contesting the validity of the assessment of the taxes in an action in the District Court of the United States for the district of Arizona; that these facts were well known to the plaintiff; that such action is still pending and undetermined; that with full knowledge of such controversy over the taxes the plaintiff has repeatedly accepted payments of interest from the defendant without any intimation or suggestion that payment of the taxes would be demanded or that default on that account would be insisted on; that even after a demand for the payment of taxes had been made by the plaintiff, in August of 1931, the plaintiff accepted payments of interest on said notes up until September first 1931, and defendant had no notice of an election by the plaintiff or of an intention by the plaintiff to attempt to declare the notes due for the nonpayment of taxes; that by reason of the facts herein above set out the plaintiff is estopped to declare the notes due and payable at this time, one more than eighteen months and the other note, two and one-half years before the contracted maturity. That for that reason the notes sued on are not due and the action is prematurely instituted.

Wherefore defendant prays that the action and

Plaintiff's Exhibit No. 1—(Continued.)

both causes be dismissed without prejudice to a future action when the notes become due by their terms and for her costs herein and for all proper relief.

JNO. W. RAY,
John W. Ray, Attorney.

“Received copy of the within Answer this 26th day of Oct., 1931.

HENRY J. SULLIVAN,
Atty. for plaintiff.

No. 35462.

[Endorsed]: Filed Oct. 26, 1931.

[Title of Superior Court and Cause.]

DECREE OF FORECLOSURE

This Cause Coming on Regularly to be heard on the 26th day of December, 1931; plaintiff appearing in person and by Counsel, Henry J. Sullivan, and the defendant Hattie L. Mosher appearing in person and by her attorney, and the defendant Maricopa County not appearing and default having been entered against it; and the plaintiff having introduced evidence both oral and documentary as by law required in support of the allegations set forth in her complaint; and the defendant Hattie L. Mosher, having introduced no evidence, and the plaintiff and defendant Hattie L. Mosher having duly rested their case, and the Court being fully advised in the premises, finds:

That the allegations set forth in the plaintiff's complaint are true; and

Plaintiff's Exhibit No. 1—(Continued.)

That the plaintiff is entitled to a foreclosure and the relief as set forth in her complaint herein.

It Is Therefore Ordered, Adjudged and Decreed that the plaintiff herein, Elsie B. Ganz, do have and recover of and from the defendant, Hattie L. Mosher, the principal sum of Five Thousand Dollars (\$5000.00) upon the first cause of action, and the principal sum of Six Thousand Dollars (\$6000.00) upon the second cause of action, together with interest upon the principal sum of \$5000.00 at the rate of Eight (8) per cent per annum from the 28th day of June, 1931, as set forth in the first cause of action; and interest at the rate of Eight (8) per cent per annum from the 1st day of September, 1931, upon the principal sum of \$6000.00, as set forth in said second cause of action, until paid, together with the further sum of Two Thousand Nine Hundred Ninety-three and 30/100 (\$2993.30) Dollars, heretofore paid by the plaintiff as and for City, County, and State taxes upon said premises, duly assessed thereon and legally attaching thereto; together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff for foreclosure search; together with the further sum of Two Hundred and Fifty Dollars (\$250.00) as and for attorney's fees, and the further sum of Twenty-three and 80/100 (\$23.80) Dollars as and for costs herein expended for the plaintiff.

Plaintiff's Exhibit No. 1—(Continued.)

That all and singular the mortgaged premises described in said complaint as

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder or said County and State

or so much thereof as may be sufficient to raise the amount found due to plaintiff for principal, interest, attorney's fees, taxes costs and expenses of sale, be sold at public auction by or under the direction of the Sheriff of Maricopa County; that said sale be made in Maricopa County and that the said Sheriff give due notice of the time and place of the sale, according to the course and practice of this Court, and the laws relating to the sale of Real Estate under Execution; that the plaintiff, or any of the parties to this suit may become purchasers at said sale; that the said Sheriff, after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of said mortgage premises; that the Sheriff, out of the proceeds of said sale, retain his fees, disbursements and commissions on said sale, and pay to the plaintiff or her attorney the principal sum of Eleven Thousand Dollars (\$11,000.00), with interest from the dates as hereinbefore provided at the rate of Eight (8) per cent per annum until paid; together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff

Plaintiff's Exhibit No. 1—(Continued.)

for foreclosure search; together with the further sum of Two Hundred and Fifty Dollars (\$250.00) as and for attorney's fees, together with the further sum of Twenty-three and 80/100 (\$23.80) Dollars, as costs incurred by the plaintiff herein;

That the Sheriff take receipt for the amount so paid and return the same to this Court with a report of the sale; that any surplus arising from the said sale, if any there be, be returned to this Court by the said Sheriff within five days after such surplus has been received and shall be ascertained to abide the further Order of this Court;

That if the sale of said property at foreclosure does not bring sufficient to cover the above amounts, the plaintiff have judgment against the defendant Hattie L. Mosher, for any deficiency;

That the purchaser or purchasers of said mortgaged premises at such Sheriff's sale, be let into possession thereof and that any of the parties to this action, who may be in possession of said premises, or any part thereof, or any parties since the commencement of this action, who have come into the possession under them, deliver possession thereof to said purchaser, or purchasers, on production of Sheriff's deed for such premises, or any part thereof;

That the defendants, and each of them, and all persons claiming by, through or under them, be forever foreclosed of and forever estopped and barred from claiming any right, title or interest

Plaintiff's Exhibit No. 1—(Continued.)
in or to said premises, or any part thereof adverse to this plaintiff.

Done in open Court this 4th day of January, 1932.

JOSEPH S. JENCKES,

Judge.

“Received Copy 12/30/31.

JNO. W. RAY.

[Endorsed]: Filed Jan. 5, 1932.

Docketed.

Recorded Book X Page 259.

Issued Special Execution.

Entered by G. H. Austin.

[Title of Superior Court and Cause.]

SPECIAL EXECUTION

State of Arizona, to the Sheriff of Maricopa County,
Arizona, Greetings:

Whereas, on the 26th day of December, 1931, the above named plaintiff recovered judgment in the Superior Court of the State of Arizona, in and for Maricopa County, in the above entitled action, against the defendant Hattie L. Mosher, for the principal sum of Eleven Thousand Dollars (\$11,000.00), with interest thereon from the 28th day of June, 1931, at the rate of Eight (8) per cent per annum on \$5000.00 of said sum, and with interest from the 1st day of September, 1931, at the rate of Eight (8) per cent per annum on \$6000.00 of said sum, until paid, together with the further sum of Twelve Dollars (\$12.00) expended by the

Plaintiff's Exhibit No. 1—(Continued.)

plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty Dollars (\$250.00) as and for attorney's fees, together with the further sum of Twenty-three and 80/100 (\$23.80) Dollars for costs herein incurred by the plaintiff; together with the further sum of Two Thousand Nine Hundred and ninety-three and 30/100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with foreclosure of plaintiff's mortgage lien against said defendant Hattie L. Mosher upon those premises known and described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State

and that said property, together with all the right, title, interest and claim which the defendant has or claims to have had be seized and sold as under execution by the Sheriff of Maricopa County, Arizona, in satisfaction of said judgment, and the proceeds of such sale, after the payment of costs and expenses thereof, be paid to the plaintiff or her attorney to be applied on and toward the satisfaction of such judgment;

Now Therefore, you, the said Sheriff are hereby commanded that you proceed to seize and sell the premises and property hereinbefore described as under execution, together with all of the right, title, claim and interest which the defendant Hattie L.

Plaintiff's Exhibit No. 1—(Continued.)

Mosher, had herein on the 28th day of March, 1928;

Herein fail not under penalty of the law to make due return hereof showing that you have executed this return before this Court at the Court House in the City of Phoenix, Arizona within Ninety (90) days after the receipt hereof.

Witness the Honorable Joseph S. Jenckes, Judge of the Superior Court of Maricopa, Arizona, at the Court House of said County this 5th day of January, 1932.

Given under my hand and seal of office of said Court the day and year last above written.

WALTER S. WILSON,

Clerk of the Superior Court.

[Court Seal]

By L. H. BUCK,

Deputy.

No. 35462

[Endorsed]: Filed Apr. 7, 1932.

AFFIDAVIT OF PUBLICATION

I, H. C. Reed, Manager of the Glendale News, a newspaper of general circulation, published weekly in the city of Glendale, state of Arizona, do solemnly swear that a copy of the notice in the matter of

Sheriff's Notice of Sale

No. 35462

as per clipping attached hereto was published in

Plaintiff's Exhibit No. 1—(Continued.)

the regular and entire edition of said newspaper and not in any supplement thereof for four consecutive weeks, as follows, to-wit:

Jan. 7-14-21-28, 1932.

H. C. REED.

Subscribed and sworn to before me this 30 day of Jan., 1932.

[Seal]

P. J. WHITE,

Notary Public.

My Commission expires 10/30/33.

[Title of Superior Court and Cause.]

SHERIFF'S NOTICE OF SALE OF REAL PROPERTY ON SPECIAL EXECUTION

Under and by virtue of a special execution issued out of and under the seal of the Superior Court of Maricopa County, Arizona, on the 5th day of January, 1932, and to me as Sheriff duly directed and delivered in the above entitled action;

Whereas, on the 26th day of December, 1931, the above named plaintiff recovered judgment in the Superior Court of the State of Arizona, in and for Maricopa County, in the above entitled action, against the defendant, Hattie L. Mosher, for the principal sum of Eleven Thousand Dollars (\$11,000.00), with interest thereon from the 28th day of June, 1931, at the rate of eight per cent per annum on \$5000.00 of said sum, and with interest from the

Plaintiff's Exhibit No. 1—(Continued.)

1st day of September, 1931, at the rate of eight per cent per annum on \$6000.00 on said sum, until paid, together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty Dollars (\$250.00) as an for attorney's fees, together with the further sum of Twenty-three and 80/100 Dollars (\$23.80) for costs herein incurred by the plaintiff; together with the further sum of Two Thousand Nine Hundred and ninety-three and 30/100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with foreclosure of plaintiff's mortgage lien against said defendant upon those premises known and described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix, according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

Now, therefore, public notice is hereby given, that I will on the 2nd day of February, 1932, at the hour of ten o'clock A.M. at the front door of the Court House in the City of Phoenix, Maricopa County, Arizona, sell to the highest bidder for cash in lawful money of the United States, all the right, title, claim and interest of the above named defendant, Hattie L. Mosher, in, of and to the above described real property.

Plaintiff's Exhibit No. 1—(Continued.)

Dated this 5th day of January, 1932.

J. R. McFADDEN,
Sheriff

By C. L. WALMSLEY,
Under Sheriff.

(Pub. January 7, 14, 21 and 28, Inc.)

Office of the Sheriff

County of Maricopa—ss.

I hereby certify that by virtue of an order issued out of the Superior Court of Maricopa County, Arizona, on the 14th day of March, 1932, setting aside the sale in the within entitled action held by me as Sheriff on the 2nd day of February, 1932, I herewith return the within Special Execution wholly unsatisfied.

Dated this 14th day of March, 1932.

J. R. McFADDEN,
Sheriff.

By C. L. WALMSLEY,
Under Sheriff.

Received: Jun. 5, 1932, 9:35.

J. R. McFADDEN,
Sheriff.

[Title of Superior Court and Cause.]

MOTION TO SET ASIDE SALE

Comes now the defendant H. L. Mosher by attorney, and moves the Court to set aside and squash the pretended sale made by the sheriff herein on the

Plaintiff's Exhibit No. 1—(Continued.)
special execution for the reason that the same having been held fully, if not more than ten days ago, and was bid in at a price in excess of the full sum due the plaintiff, including all costs and fees taxed and demanded, the purchase price bid has not been paid. That the sale was not made for CASH in hand as the law and the special execution provides.

Upon this motion defendant asks the judgment of the court.

JNO. W. RAY,
John W. Ray,
Attorney.

Receipt of copy of the within Motion is hereby acknowledged this 18th day of February, 1932.

HENRY J. SULLIVAN,
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 18, 1932.

Entered by G. H. Austin.

In the Superior Court of Maricopa County, State
of Arizona, Division No. 2

Court convened at 9:30 a.m., Monday, March 14,
1932.

Present: Joseph S. Jenckes, Judge; Walter S. Wilson, Clerk; the Sheriff; the County Attorney; and the Court Reporter.

[Title of Cause.]

It is ordered by the court granting Defendant's Motion to Set Aside Sale.

Plaintiff's Exhibit No. 1—(Continued.)

[Title of Superior Court and Cause.]

SPECIAL EXECUTION

State of Arizona, to the Sheriff of Maricopa County,
Arizona: Greeting:

Whereas, on the 26th day of December, 1931, the above named plaintiff recovered judgment in the Superior Court of the State of Arizona, in and for Maricopa County, in the above entitled action, against the defendant Hattie L. Mosher, for the principal sum of Eleven Thousand Dollars (\$11,000.00) with interest thereon from the 28th day of June, 1931, at the rate of Eight (8) per cent per annum on \$5000.00 of said sum, and with interest from the 1st day of September, 1931, at the rate of Eight (8) per cent per annum on \$6000.00 of said sum, until paid, together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty Dollars (\$250.00) as and for attorney's fees, together with the further sum of Twenty-three and 80/100 (\$23.80) Dollars for costs herein incurred by the plaintiff: together with the further sum of Two Thousand Nine Hundred and ninety-three and 30/100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with foreclosure of plaintiff's mortgage lien against said defendant Hattie L. Mosher upon those premises known and described as follows, to-wit:

Plaintiff's Exhibit No. 1—(Continued.)

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State

and that said property, together with all the right, title, interest and claim which the defendant has or claims to have had be seized and sold as under execution by the Sheriff of Maricopa County, Arizona, in satisfaction of said judgment, and the proceeds of such sale, after the payment of costs and expenses thereof, be paid to the plaintiff or her attorney to be applied on and toward the satisfaction of such judgment;

Now therefore, you, the said Sheriff are hereby commanded that you proceed to seize and sell the premises and property hereinbefore described as under execution, together with all of the right, title, claim and interest which the defendant Hattie L. Mosher, had herein on the 28th day of March, 1928;

Herein fail not under penalty of law to make due return hereof showing that you have executed this return before this Court at the Court House in the City of Phoenix, Arizona, within Ninety (90) days after the receipt hereof.

Witness the Honorable Joseph S. Jenckes, Judge of the Superior Court of Maricopa County, Arizona, at the Court House of said County this 16th day of March, 1932.

Plaintiff's Exhibit No. 1—(Continued.)

Given under my hand and seal of office of said Court the day and year last above written.

[Court Seal.] WALTER S. WILSON,

Clerk of the Superior Court.

By L. H. BUCK,

Deputy

[Endorsed]: Filed Apr. 29, 1932.

State of Arizona

County of Maricopa—ss.

Under and by virtue of the foregoing Execution and Order of Sale, I, J. R. McFadden, Sheriff of Maricopa County, duly seized and levied upon all property described in said Execution and Order of Sale in the manner and form required by law. I duly noticed said property for sale in satisfaction of said judgment, as required by law, and the mandate of said writ, by causing the legal notice of sale to be published weekly for four consecutive weeks next before said sale, in the Tempe News a newspaper of general circulation, published in said County, and by posting three printed copies of said notice in said County, as required by law, one copy of said notice being posted at the door of the Court House of said County, all for twenty-one days next before said sale.

On the 12th day of April, 1932, at the hour of ten o'clock a.m., at the door of the Court House in said County, in the City of Phoenix, all of said property

Plaintiff's Exhibit No. 1—(Continued.)
mentioned, set forth and fully described in said Execution and Order of Sale, was duly offered for sale at public auction, in satisfaction of said judgment, pursuant to said notice and said writ. And at said sale all of the said property so described therein was duly struck off and sold to Elsie B. Ganz, the said Plaintiff for the sum of Fourteen Thousand Nine Hundred Seventy-three and 33/100 Dollars, she being the highest bidder, and that being the highest sum bid, and said sum so bid and received being equal to the judgment and costs in this case, this Execution and Order of Sale is now returned wholly satisfied.

I have made and delivered to the said purchaser the legal certificate of sale, and have filed for record with the County Recorder of said County, a true copy or duplicate of said certificate.

The Receipt of plaintiff's attorney in full satisfaction of said judgment is attached hereto and made a part of this return.

Dated this 12th day of April, A. D. 1932.

J. R. McFADDEN,
Sheriff

By C. L. WALMSLEY,
Under Sheriff.

The State of Arizona,
County of Maricopa—ss.

Received of J. R. McFadden, Sheriff of Maricopa County, Arizona, the sum of Fourteen Thousand Nine Hundred Seventy-three and 33/100 Dollars in

Plaintiff's Exhibit No. 1—(Continued.)

full payment and satisfaction of the judgment and costs in the foregoing Execution and Order of Sale, said sum being the amount bid and received for the property this day sold at Sheriff's sale in satisfaction of said judgment, and said sum so bid and received being evidenced and represented by the Certificate of Sale issued to the purchaser of said property, who is also the plaintiff in this case.

Dated this 12th day of April, A. D. 1932.

(Signed) HENRY J. SULLIVAN,
Attorney for Plaintiff.

Judgment	\$11,000.00
Fore S.	12.00
Interest	\$ 610.23
Attorney's Fees	\$ 250.00
Taxes	\$ 2,993.30
Costs	\$ 23.80
Costs Accruing	\$ 84.00
Total	\$14,973.33
By Sale	\$14,973.33
Balance Due	\$ None

I, the undersigned, publisher of Tempe Daily News, a newspaper of general circulation printed and published at Tempe, Maricopa County, Arizona, do hereby certify and swear that the hereto annexed Sheriffs Notice of Sale No. 35462 Elsie B. Ganz vs. Hattie Mosher et al was duly published for the full period 4 consecutive weeks as required by law, in said Tempe Daily News: the first publication being in the issue dated March 19, 1932, the second publication in

Plaintiff's Exhibit No. 1—(Continued.)
the issue dated March 26, 1932, the third publication
in the issue dated April 2, 1932, the fourth publica-
tion in the issue dated April 9, 1932, and the last pub-
lication being in the issue dated April 9, 1932.

CURT W. MILLER,

Publisher Tempe Daily News.

State of Arizona,

County of Maricopa—ss.

Subscribed and sworn to before me this 9th day
of April, 1932.

[Seal]

W. J. KINGSBURY,

Notary Public.

My Commission expires June 4, 1932.

[Title of Superior Court and Cause.]

SHERIFF'S NOTICE OF SALE OF REAL PROPERTY ON SPECIAL EXECUTION

Under and by virtue of an Execution (Special) is-
sued out of and under the seal of the Superior Court
of Maricopa County, Arizona, on the 16th day of
March, 1932, and to me as such Sheriff duly directed
and delivered in the above entitled action;

Whereas, on the 26th day of December, 1931, the
above named plaintiff recovered judgment in the
Superior Court of the State of Arizona, in and for
Maricopa County, in the above entitled action,
against the defendant Hattie L. Mosher, for the prin-
cipal sum of Eleven Thousand Dollars (\$11,000.00),
with interest thereon from the 28th day of June,

Plaintiff's Exhibit No. 1—(Continued.)

1931, at the rate of eight per cent per annum on \$5000.00 of said sum, and with interest from the 1st day of September, 1931, at the rate of eight per cent per annum on \$6000.00 of said sum, until paid, together with the further sum of Twelve Dollars expended by the plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty (\$250.00) Dollars as and for attorney's fees, together with the further sum of Twenty-three and 80-100 Dollars for costs herein incurred by the plaintiff, together with the further sum of Two Thousand Nine Hundred and Ninety - three and 30-100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with a foreclosure of plaintiff's mortgage lien as against said defendant Hattie L. Mosher upon those premises known and described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

Now, therefore, public notice is hereby given that I will on the 12th day of April, 1932, at the hour of ten o'clock A.M., at the front door of the Court House in the City of Phoenix, Maricopa County, Arizona, sell to the highest bidder for cash in lawful money of the United States, all the right, title, claim and interest of the above named defendants, in, of and to the above described real property.

Plaintiff's Exhibit No. 1—(Continued.)

Dated this 16th day of March, 1932.

J. R. McFADDEN,

Sheriff

By C. L. WALMSLEY,

Under Sheriff.

Pub. dates, Mar. 19 and 26 and April 2 and 9, 1932.

Henry J. Sullivan

Attorney for Plaintiff

819 Title and Trust Bldg

Phoenix, Arizona

Received Mar. 16, 1932, 4:37. J. R. McFadden,
Sheriff.

[Title of Superior Court and Cause.]

MOTION TO SET ASIDE SALE

Comes now the defendant, H. L. Mosher by attorney, and moves the Court to set aside the sale reported to have been made by the sheriff under a special execution on April 12th, 1932, for the reasons following:

Defendant shows the court that by the records and files in this case it appears that under the decree of foreclosure there was issued out of this court a special execution on January 5th, 1932, returnable within (90) ninety days, which would give the sheriff until April 5th, 1932, to do execution thereon; that there was an attempted sale made thereunder, which was for cause shown set aside on March 14th, 1932, leaving the special execution in the hands of the Sheriff in full force and virtue and with some time to run before return day fixed therein; that such

Plaintiff's Exhibit No. 1—(Continued.)

special execution remained in the hands of the said sheriff and was returned by him and filed in the clerks office April 7th, 1932, as appears of record, wholly unsatisfied.

That on March 16th, 1932, and while the first special execution was still alive and in full force and in the hands of the sheriff unreturned and unexecuted there was issued on the direction of the plaintiff, a second special execution for the same sum and under the same decree of foreclosure which was placed in the hands of the sheriff on the date of issue, March 16th, 1932, and under that second special execution the sheriff advertised the property directed to be sold, and the same property directed to be sold under the first special execution then also in his hands for action, in a newspaper and by posters that he would under and by virtue of the said second special execution sell said property; that afterwards, under the commands of the said second execution and after he had made return of the first special execution, and on April 12th, 1932, the said sheriff acting under the direction of the plaintiff and by virtue of the second special execution, attempted to again sell the property, the plaintiff being the bidder thereof, at a price which was some twelve hundred dollars less than the same plaintiff bid at the first sale, which had been set aside. That the property so sold by the sheriff brought at the second sale, the one herein sought to be set aside and declared void, the total of (\$14,973.33) fourteen thousand nine hundred seventy-three and 33/100 dollars; that it is and was at the time of sale worth at least fifty thousand dollars, so

Plaintiff's Exhibit No. 1—(Continued.)

that the sale so made was for grossly inadequate sum, and as defendant is informed may have been caused by the question as to the legality of the sale under this special execution and legitimate bidders refrained from bidding at all, so that by the cloud cast on the sale, the property did not bring anything like its real value.

That on the second sale made April 12th, there was erroneously included in the sum to be realized the costs of advertising the first sale that had been by this court set aside, because the bidder thereat did not pay the amount of his bid; this sum amounted to twenty-six dollars, to the extent of which this defendant is not chargeable.

There is no statutory authority for the issuance of an alias or second or subsequent special execution in this state, nor in the decree rendered.

The premises considered, defendant prays the Court to set aside and declare as void the so-called sale made by the sheriff April 12th, 1932.

JOHN W. RAY,

By John W. Ray, attorney

MARSHALL W. HAISLIP

Cited: Stat. 4211; 4213; 4214. Corpus Juris Vol. 23, Executions sec. 166; 167; 168, page 392-3; Freeman Executions Sec. 49 1st Ed.

Rec'd copy this 3rd day of Sep. 1932.

H. J. SULLIVAN,

Atty. for deft.

[Endorsed]: Filed Sep. 3, 1932.

Plaintiff's Exhibit No. 1—(Continued.)
In the Superior Court of Maricopa County,
State of Arizona
Division No. 2

Court convened at 9:30 A. M., Monday, September 26, 1932. Present: Joseph S. Jenckes, Judge; Walter S. Wilson, Clerk; the Sheriff, the County Attorney; and the Court Reporter.

[Title of Cause.]

It is ordered by the Court denying Motion to Set Aside Execution and Sale.

State of Arizona,
County of Maricopa—ss.

I, Walter S. Wilson, Clerk of the Superior Court of Maricopa County, State of Arizona, hereby certify that I have compared the foregoing copies with originals

Complaint—Filed September 16, 1931.

Summons, and Return of Summons—Filed September 21, 1931.

Demurrer—Filed October 6, 1931.

Answer—Filed October 26, 1931.

Decree of Foreclosure—Filed January 5, 1932.

Special Execution & Return—Filed April 7, 1932.

Sheriff's Notice of Sale Under Special Execution—Filed April 7, 1932.

Motion to Set Aside Sale—Filed February 18, 1932. Minute Entry (Order granting Defendant's Motion to be set aside)

Special Execution and Return—Filed April 29, 1932.

Plaintiff's Exhibit No. 1—(Continued.)

Motion to Set Aside Sale—Filed September 3, 1932, and Minute Entry (Order denying Motion to Set aside Execution and sale,

filed in my office on the dates hereinabove stated, and that the same are true copies of the originals and of the whole thereof.

Witness my hand and the Seal of said Court, this 11th day of December, A. D. 1940.

[Seal]

WALTER S. WILSON,

Clerk of the Superior Court,
Maricopa County, Arizona.

[Endorsed]: Filed Feb. 3, 1941, and Sept. 16, 1941.

PLAINTIFFS' EXHIBIT No. 2

SHERIFF'S DEED

This Indenture, Made the 27th day of October, in the year of our Lord one thousand nine hundred and thirty two, between J. R. McFadden, Sheriff of the County of Maricopa, State of Arizona, the party of the first part, and Elsie B. Ganz, the party of the second part,

Witnesseth, Whereas, in and by a certain judgment and Decree made and entered by the Superior Court of Maricopa County, State of Arizona, on the 26th day of December, 1931, in a certain action then pending in said Court, wherein Elsie B. Ganz was Plaintiff and Hattie L. Mosher, County of Maricopa, a body politic, were defendants.

It was, among other things, ordered, adjudged and decreed that all and singular the mortgaged premises described in the complaint in said action, and specifically described in said judgment and decree should be sold at public auction by the Sheriff of the said County of Maricopa in the manner required by law.

And Whereas, in accordance with said judgment and decree, an order of sale was, on the 16th day of March, 1932, issued and delivered to the said Sheriff of the County of Maricopa commanding him to seize the premises described in said judgment, and decree and sell the same as under execution, and apply the proceeds of said sale toward the satisfaction of said judgment, and make return thereof within ninety days; and, whereas, pursuant to said order of sale to him directed and delivered, the said Sheriff of the County of Maricopa duly levied on the premises mentioned in said judgment and decree and hereinafter described and, agreeably to said judgment and decree and the provisions of law, did at the hour of ten o'clock A. M., on the 12th day of April, 1932, after due public notice had been given as required by the laws of this State and the course and practice of said Court, sell said premises at public auction at the door of the Court House in the city of Phoenix, in said County of Maricopa; at which sale the said premises mentioned in said judgment and decree, and hereinafter described, were fairly struck off to the said Elsie B. Ganz, the said party of the second part, for the sum of Four-

teen Thousand Nine Hundred Seventy-three and 33/100 Dollars she being the highest bidder, and that being the highest sum bid for the same.

And Whereas, the said party of the second part thereupon paid to the said Sheriff the said sum of money so bid by her.

And Whereas, the said Sheriff thereupon made and issued the usual certificate in duplicate of the said sale in due form of law, and delivered one thereof to the said purchaser and caused the other to be filed in the office of the County Recorder of said County of Maricopa.

And Whereas, more than six months have elapsed since the date of said sale, and no redemption has been made of the premises so sold as aforesaid, by or on behalf of the said judgment debtors, the said Hattie L. Mosher, et al, or by or on behalf of any other person. And no notice of intention to redeem having been given by any lien holder, creditor or other person entitled to redeem, as provided by law.

Now, This Indenture Witnesseth: That the said party of the first part, the said Sheriff, in order to carry into effect the sale so made by him aforesaid, in pursuance of said judgment and decree and in conformity to the Statute in such case made and provided, and also in consideration of the premises and of the said sum of Fourteen Thousand Nine Hundred Seventy-three and 33/100 (\$14,973.33) Dollars, lawful money of the U. S., so bid and paid by the said purchaser, the said party of the second part, the receipt of which is hereby acknowledged,

has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said party of the second part, and to her heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the said County of Maricopa, State of Arizona, bounded and particularly described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the revision and revisions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold all and singular the said premises hereby conveyed, or intended so to be, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

In Witness Whereof, the said party of the first part of these presents has hereunto set his hand and seal the day and year first above written.

[Seal]

J. R. McFADDEN,

Sheriff of the County of
Maricopa.

I. R. S.

\$15.00

Cancelled.

State of Arizona

County of Maricopa—ss.

On the 27th day of October, 1932, personally appeared before me, the undersigned authority the within-named J. R. McFadden, Sheriff of the County of Maricopa, State of Arizona, known to me to be the person described in and whose name is subscribed to the within instrument, and he, the said J. R. McFadden, acknowledged to me that he, as such Sheriff of said County, executed the same for the uses, purposes and considerations therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal of Office at my office in the County of Maricopa, State of Arizona, the day and year in this Certificate first above written.

[Seal]

C. L. WALMSLEY,

Notary Public in and for the
County of Maricopa, Arizona.

My commission expires December 23, 1934.

Filed and recorded at request of Harry Sullivan,
Dec. 15 at 10:04 AM 1932.

W. H. LINVILLE,

County Recorder.

By K. P. MAUZY,

#28605

Deputy.

State of Arizona,
County of Maricopa—ss.

I, Roger G. Laveen, County Recorder, in and for the County and State aforesaid, hereby certify that I have compared the foregoing copy with the Sheriff's Deed between J. R. McFadden, Sheriff of the County of Maricopa, State of Arizona, party of the first part, and Elsie B. Ganz, the party of the second part, filed and recorded in my office on the 15th day of December, 1932, in Book 270 of Deeds at page 313, and that the same is a full, true and correct copy of such Record and of the whole thereof.

Witness my hand and seal of office, this 12th day of December, A. D. 1940.

[Seal] ROGER G. LAVEEN,
County Recorder,
By IOLA GRAY,
Deputy.

[Endorsed]: Filed Feb. 3, 1941 and Sep. 16. 1941.

PLAINTIFFS' EXHIBIT No. 3

WARRANTY DEED

(Revenue Stamps)

Know All Men By These Presents: That Elsie B. Ganz, (a widow), of the County of Maricopa, State of Arizona, for and in consideration of the sum of Ten Dollars (\$10.00), and other valuable considerations, to her in hand paid by Joe O'Connell, of Phoenix, Arizona, husband of Jessie B. O'Connell Grantee herein, has granted, sold and conveyed and

by these presents does grant, sell and convey unto the said Grantee all that certain real property situate in the County of Maricopa, State of Arizona, described as follows:

Lot Two (2), Block Three (3), Churchill Addition, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps, page 69 thereof.

To Have and to Hold the above described property, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Grantee, his heirs and assigns forever. And the Grantor hereby binds herself, her heirs, executors and administrators, to warrant and defend, all and singular, the said property unto the said Grantee, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the following exceptions—

To all State of Arizona, County of Maricopa and City of Phoenix real and personal property taxes, but the Grantor herein specifically warrants against any personal property taxes of the Grantor.

Street Paving Lien of the City of Phoenix, for the principal sum of \$35.96 Under Bond Act of 1919, levied for Street Improvements, Bonded June 30, 1931, Assessment #2, payable in ten annual installments on the first day of December of each year, commencing December 1, 1931, bearing interest at the rate of 6% per annum on all deferred payments,

payable semi-annually on the first day of June and December of each year. All installments of principal and interest paid to and including December 1, 1933, as evidenced by the record in the office of the Treasurer of said City of Phoenix, in Volume 238, Sheet 2 thereof.

The rights of O'Connell Brothers, Inc., a corporation of Arizona, under the terms of that certain Lease dated September 17, 1931, made and executed by H. L. Mosher to said O'Connell Brothers, Inc., a corporation of Arizona, Term of Five Years from October 1, 1931, recorded September 19, 1931 in Book 11 of Leases, page 326, records of Maricopa County, Arizona.

Judgment against Hattie L. Mosher, in favor of Salt River Valley Water Users' Association, for \$297.07 and \$16.80, docketed May 21, 1930, in Cause #28506, Kibbey, Bennett, Gust, Smith and Rosenfeld, Attorneys for Judgment Creditor, April 21, 1932, filed Mandate Supreme Court affirming Judgment, Mandate redocketed April 21, 1931. This Judgment partially satisfied to extent of \$150.00, January 31, 1934. Sloan, McKesson and Scott.

Witness my hand and seal this 1st day of May, 1934.

[Seal]

ELSIE B. GANZ.

State of Arizona,
County of Maricopa—ss.

Before me, Marion E. Jacques, a Notary Public, in and for the County of Maricopa, State of Arizona,

on this day personally appeared Elsie B. Ganz, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this 1st day of May, 1934.

[Seal]

MARION E. JACQUES,

Notary Public.

My commission expires July 18, 1934.

[Endorsed]: Filed Feb. 3, 1941 and Sep. 16, 1941.

PLAINTIFF'S EXHIBIT No. 4

REALTY MORTGAGE

Know All Men, That Greene & Griffin Real Estate and Investment Company, a corporation, of Phoenix, Arizona, party of the first part, in consideration of Nine thousand (\$9,000.00) Dollars, in hand paid by J. Gerard, of Phoenix, Arizona, party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said party of the second part, her heirs and assigns forever, the following real estate, lying and being in the County of Maricopa and State of Arizona, and known and described as:

Lots one (1) and two (2), Block three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of

Plaintiff's Exhibit No. 4—(Continued.)

record in the office of the Recorder of Maricopa County, Arizona. Together with all the privileges and appurtenances to the same belonging.

To Have and To Hold the same to the said party of the second part, her heirs and assigns forever.

And the said Greene & Griffin Real Estate and Investment Company, party of the first part, hereby covenant that it is well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and has good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered, and that it will forever warrant and defend the same to the party of the second part, her heirs and assigns, against all claims whatsoever.

Provided Always, and these presents are upon this express condition, that if the said party of the first part, its successors and assigns shall pay or cause to be paid to the said party of the second part, her heirs, executors, administrators or assigns, the just and full sum of Nine Thousand (\$9000.00), according to the conditions of one certain promissory note bearing even date herewith, executed by the said Greene & Griffin Real Estate and Investment Company, party of the first part, to the said party of the second part, and shall moreover pay annually to the proper officers all taxes, which shall be assessed on the said real estate, on or before the date upon which such taxes shall have become delinquent, and insure and keep insured the buildings thereon against loss or damage by fire in the sum

Plaintiff's Exhibit No. 4—(Continued.)

of dollars or over in insurance companies to be selected by the said party of the second part, her heirs or assigns, and the policy or policies of such insurance to be payable to the mortgagee as her interest may appear, and in default thereof it shall be lawful for the said party of the second part, her heirs or assigns, to effect such insurance, and the premium and premiums and other legal expenses, fees, costs and charges paid for effecting the same, together with interest thereon at *th* rate of twelve (12) per cent per annum, shall be a lien upon the said mortgages premises, added to the amount of the said note and secured by these presents until the payment of said note, then these presents shall be null and void. But in case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, or in case of the failure on the part of said party of the first part to keep or perform any other agreement, stipulation or condition herein contained, or contained in the note above described, then in such case the whole amount of the said principal sum shall, at the option of the said party of the second part, her representatives or assigns, be deemed to have become due, and the same with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made

Plaintiff's Exhibit No. 4—(Continued.)

payable at the time when such failure shall occur as aforesaid; and it shall be lawful in such case for said party of the second part, her heirs, executors, administrators or assigns, to grant, sell and convey the said real estate, with the appurtenances thereunto belonging, at public auction or vendue, after giving thirty days' notice of the time and place of such sale by publishing the same in a newspaper published within the county where the mortgaged premises are situated; and on such sale to make and execute to the purchaser or purchasers, his, her or their heirs and assigns, good and sufficient deeds of conveyance in the law, conveying to such purchaser or purchasers all the title, interest and estate of the mortgagors in and to said lands and premises, without redemption; and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said note, together with all costs and charges, rendering the surplus moneys, if any there be, to the said party of the first part, its successors and assigns, after deducting the costs of such vendue as aforesaid; and in case of the foreclosure of this mortgage by suit, the plaintiff in the action shall be entitled to the appointment of a receiver of said mortgaged property, without bonds to take possession of the same and collect the rents and profits thereof, pending foreclosure proceedings; and in case of foreclosure by suit or public sale, the said party of the first part, for itself, its representatives or assigns, does covenant and agree that it will pay to the said party of the second part,

Plaintiff's Exhibit No. 4—(Continued.)

her representatives or assigns, in addition to the taxable costs in the foreclosure suit, Nine hundred (\$900.00) dollars attorney fees.

In Witness Whereof, Greene & Griffin Real Estate and Investment Company has caused these presents to be executed in its corporate name by its President, and its corporate seal affixed, attested by its Secretary this 24th day of February, A. D., 1913.

[Corporate Seal]

GREENE & GRIFFIN REAL
ESTATE AND INVEST-
MENT CO.

By R. H. GREENE,
Its President.

Attested by:

J. F. TRACY,
Its Secretary.

State of Arizona,
County of Maricopa—ss.

Before me, M. C. Barnum, a Notary Public in and for said County, Arizona State, on this day personally appeared R. H. Green and J. F. Tracy, known to me to be the persons whose names are subscribed to the foregoing instrument as President and Secretary of the Corporation described in the foregoing instrument, and as such President and Secretary acknowledged to me that they executed the same for said Corporation for the purpose and consideration therein expressed, as its free act and

Plaintiff's Exhibit No. 4—(Continued.)

deed, and by each of them voluntarily executed.

Given under my hand and seal of office, this 24th day of February, A.D., 1913.

[Seal] M. C. BARNUM,
Notary Public.

(My commission expires February 18, 1916.)

Filed and recorded at request of Josephine Gerard, May 29, 1913, at 9:50 A.M. in Book 85 of Mortgages, page 303-4. Fee #5425.

VERNON L. VAUGHN,
County Recorder
By J. D. HENDERSON,
Deputy.

Satisfaction in full of this Mortgage is hereby acknowledged and the same is released of record this 26 day of April, 1929.

A. B. C. DAVENPORT,
Assignee.

Attest:

J. K. WARD,
County Recorder.
By O. E. ROGERS, JR.,
Deputy.

The note secured by this Mortgage produced and cancelled in my presence this 26 day of April, 1929.

J. W. WARD,
County Recorder.
By O. E. ROGERS, JR.,
Deputy.

For Assignment of this Mortgage see Book 7 of Assignment of Mortgages, page 159.

Plaintiff's Exhibit No. 4—(Continued.)

For Assignment of this Mortgage see Book 8 of Assignment of Mortgages, page 372.

For Assignment of this Mortgage see Book 12 of Assignment of Mortgages, page 388.

For Extension of this Mortgage see Book 114 of Mortgages, page 361.

For Extension of this Mortgage see Book 191 of Mortgages, page 208.

For Partial Release of this Mortgage see Book 21 of Release of Mortgages, page 101.

EXTENSION OF REALTY MORTGAGE

Memoranda of Agreement between J. Gerard, whose full name is Josephine Gerard, a widow, and Hattie L. Mosher, a widow, both of Phoenix, Arizona. Witnesseth: Whereas, on the 24th day of February, 1913, the Greene and Griffin Real Estate and Investment Company executed a certain promissory note for Nine Thousand Dollars (\$9,000.00) of even date therewith, as follows:

Phoenix, Arizona, Feb. 24th, 1913. No.

On or before, three (3) years after date, without grace, for value received, Greene & Griffin R. E. and Inv. Co. promise to pay to J. Gerard, of Phoenix, Ariz., or order, the sum of Nine Thousand (\$9,000.00) Dollars, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; and should the interest not be paid semi-annually, then

Plaintiff's Exhibit No. 4—(Continued.)

the whole sum of principal, and interest, shall become immediately due and payable, at the option of the holder of this note. Should suit be brought to recover on this note Greene & Griffin R. E. & I. Co. promise to pay as attorney's fees \$900.00 additional on amount found due on this note. Principal and interest payable in U. S. Gold Coin. All payable at Phoenix, Arizona.

\$1000.00 or more may be paid on the principal of this note at any time.

\$9000.00 due February 24th, 1916.

GREENE & GRIFFIN REAL
ESTATE AND INVEST-
MENT COMPANY.

R. H. GREENE,

Prest.

J. F. TRACY,

Secy.

and secured the same by a mortgage on the following described real estate, to-wit:

Lots One (1) and Two (2) in Block Three (3) of Churchill's Addition to the City of Phoenix, as per map, or plat of said addition on file and of record in the office of the County Recorder of Maricopa County, State of Arizona, which said mortgage was recorded in the office of the said County Recorder in Book 85 of Mortgages, at pages 303 and 304, on May 29th, 1913, at the request of the said Josephine Gerard:

And whereas, said Greene & Griffin Real Estate and Investment Company, on the First day of July,

Plaintiff's Exhibit No. 4—(Continued.)

1914, sold, and by Warranty Deed conveyed said real estate to the said Hattie L. Mosher subject to said mortgage, and paving lien on Lot One (1) amounting to \$600.06, and paving lien on Lot Two (2) amounting to \$426.89, which said deed was recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 110 of Deeds, at page 179 on July 9th, 1914;

And whereas, said promissory note has not been paid, and the said J. Gerard, mortgagee and holder of the said note agrees to extend the time of payment thereon up to, and until, the 24th day of February, 1928;

Now, Therefore, in consideration of said extension, said Hattie L. Mosher agrees to pay said promissory note with the specified rate of interest thereon upon the said 24th day of February, 1928.

In Witness Whereof, the parties hereto have hereunto set their hands, and seals, at Phoenix, Arizona, this 7th day of October, 1918.

J. GERARD.

HATTIE L. MOSHER.

State of Arizona -
County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in and for the County of Maricopa State of Arizona, on this day personally appeared J. Gerard, whose full name is Josephine Gerard and Hattie L. Mosher, known to me to be the persons whose names are subscribed to the foregoing instrument, and

Plaintiff's Exhibit No. 4—(Continued.)

acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7th day of October, 1919.

[Seal]

J. B. WOODWARD,

Notary Public.

My commission expires February 16th, 1920.

Filed and recorded at request of Hattie L. Mosher Oct. 9, 1919, at 3:15 P.M. in Book 114 of Mortgages, page 361-2. Fee #17365.

EDITH M. JACOBS,

County Recorder

By G. H. BOEHM,

Deputy.

ASSIGNMENT OF MORTGAGE

Know All Men by These Presents:

That I, J. Gerard, whose full name is Josephine Gerard, widow, the party of the first part, for and in consideration of the sum of Nine Thousand Dollars, (\$9,000.00) to me in hand paid by Julia Mosher-Collins, the party of the second part, the receipt whereof is hereby acknowledged do by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage, bearing date the 24th day of February, one thousand nine hundred and thirteen, made and executed by The Greene and Griffin Real Estate and Investment Company, to J. Gerard, (whose full name is Josephine Gerard) together with the note in said mortgage described,

Plaintiff's Exhibit No. 4—(Continued.)

and the money due, and to become due thereon, which said mortgage was recorded on the 29th day of May, 1913, in Book 85 of Mortgage Records of Maricopa County, Arizona, at pages 303 and 304.

Together with the note therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part her true and lawful attorney, irrevocable, in her name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest, and in case of a payment to discharge the same as fully as the said party of the 1st part might or could do if these presents were not made.

In Witness Whereof, said party of the first part has signed these presents the 7th day of October, A.D., 1919.

J. GERARD.

State of Arizona

County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in and for the County of Maricopa State of Arizona, on this day personally appeared J. Gerard, whose full name is Josephine Gerard known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she

Plaintiff's Exhibit No. 4—(Continued.)

executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 7th day of October, A.D., 1919.

[Seal]

J. B. WOODWARD,

Notary Public.

My Commission expires February 16th, 1919.

Filed and recorded at the request of H. L. Mosher, Nov. 8, 1919, at 11:55 A.M. in Book 7 of Assignment of Mortgages, page 159. Fee #19265.

EDITH M. JACOBS,

County Recorder

By G. H. BOEHM,

Deputy.

ASSIGNMENT OF MORTGAGE

Know All Men by These Presents:

That I, Julia Mosher-Collins, married, the party of the first part, for and in consideration of the sum of Nine Thousand Dollars, (\$9,000.00) Dollars, to me in hand paid by my husband, James Dean Collins, commonly known as "Dean Collins" the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage bearing date the 24th day of February one thousand nine hundred & Thirteen (13) made and executed by The Greene and Griffin Real Estate and Investment Company to J. Gerard, (whose full name is Josephine Gerard). Together with the note

Plaintiff's Exhibit No. 4—(Continued.)

in said mortgage described, and the money due, and to become due thereon, which said mortgage was recorded on the 29th day of May, 1913, in Book 85 of the Mortgage Records of Maricopa County, Arizona, at pages 303 and 304.

Together with the Note therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part her true and lawful attorney, irrevocable, in her name, or otherwise, but at the proper costs and charges of the said party of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest; and in case of a payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In Witness Whereof, said party of the first part has signed these presents, the First (1st) day of March, A.D., 1920.

JULIA MOSHER-
COLLINS.

By HATTIE L. MOSHER,
Her Attorney-in-Fact.

State of Arizona,
County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared Hattie L. Mosher known to me to be the person whose name is sub-

Plaintiff's Exhibit No. 4—(Continued.)

scribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this First day of March, A.D., 1920.

[Seal] J. B. WOODWARD,
Notary Public.

(My commission expires February 16th, 1924)

Filed and recorded at request of Hattie Mosher, Apr. 18, 1921, at 1:11 P.M., in Book 8 of Assignment of Mortgages, page 372-3. Fee #7637.

EDITH M. JACOBS,
County Recorder
By WALTER W. SMITH,
Deputy.

POWER OF ATTORNEY
GENERAL

Know All Men by These Presents: That I Julia Winifred Mosher Collins, formerly and until September 16th, 1914, Julia Winifred Mosher have made, constituted and appointed, and by these presents do hereby make, constitute and appoint Hattie Lount Mosher my true and lawful Attorney for me and in my name, place and stead, for my use and benefit to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interest, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me; and have, use and take all lawful ways or

Plaintiff's Exhibit No. 4—(Continued.)

means in my name, or otherwise, for the recovery thereof, by legal process, and to compromise and agree for the same, and grant acquittance or other sufficient discharges for the same for me and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seizing and possessing of all lands, and all deeds and other assurances in the law thereof; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements, hereditaments, upon such terms and conditions and under such covenants as she shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession or in action; and to make, do and transact all and every kind of business or what nature and kind soever; and, also, for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter bills of lading, bills bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing, of whatever kind and nature, as may be necessary or proper in the premises.

Giving and Granting unto my said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and neces-

Plaintiff's Exhibit No. 4—(Continued.)

sary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof hereby ratifying and confirming all that my said Attorney Hattie Lount Mosher shall lawfully do or cause to be done by virtue of these presents:

In Witness Whereof, I have hereunto set my hand, this 20th day of July, one thousand nine hundred and fifteen.

JULIA WINIFRED MOSHER
COLLINS.

Signed, Sealed and delivered in the *present* of
Edgar B. Piper.

W. E. Hartmus. 25c I.R.S. Cancelled.

Helen Milbourn.

State of Oregon,
County of Multnomah—ss.

Before me, W. E. Hartmus, a Notary Public in and for the County of Multnomah, State of Oregon, on this day personally appeared Julia Winifred Mosher Collins known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this 20th day of July, A.D., 1915.

[Seal] W. E. HARTMUS,
Notary Public.

(My Commission expires May 25, 1919)

Filed and recorded at request of Hattie L.

Plaintiff's Exhibit No. 4—(Continued.)

Mosher, Apr. 2, 1921, at 11:57 A.M. in Book 5 of Power of Attorneys, page 141-2. Fee #6652.

EDITH M. JACOBS,

County Recorder

By WALTER W. SMITH,

Deputy.

PARTIAL SATISFACTION OF MORTGAGE
Know All Men by These Presents:

That the Mortgage executed by Greene & Griffin Real Estate and Investment Company, a corporation, of Phoenix, Arizona, the party of the first part therein, to J. Gerard, of Phoenix, Arizona, a widow, the party of the second part therein, bearing date the 24th day of February, 1913, and recorded in the office of the County Recorder of Maricopa County, State of Arizona, in Book 85 of Mortgages, at pages 303 and 304, on the 29th day of May, 1913, together with the debt thereby secured is as to Lot Two (2) in Block Three (3) fully paid, satisfied and discharged, and is retained on Lot One (1), Block Three (3).

In Witness Whereof, I have hereunto set my hand and seal this 11th day of April, 1921.

JAMES DEAN COLLINS.

Signed and delivered in the presence of
W. E. Critchlow.

Harry B. Critchlow.

State of Oregon

County of Multnomah—ss.

Before me, W. E. Critchlow, a Notary Public in and for the County of Multnomah, State of Oregon,

Plaintiff's Exhibit No. 4—(Continued.)

on this day personally appeared James Dean Collins known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 11th day of April, A.D., 1921.

[Seal] W. E. CRITCHLOW,
Notary Public.

(My Commission expires Jan. 16, 1925).

Filed and recorded at request of Hattie Mosher, Apr. 18, 1921, at 1:12 P.M. in Book 21 of Releases of Mortgages, page 101. Fee #7638.

EDITH M. JACOBS,
County Recorder
By WALTER W. SMITH,
Deputy.

EXTENSION OF MORTGAGE

Memorandum of Agreement, Between James Dean Collins, (commonly known as Dean Collins), a widower, and Hattie L. Mosher, a widow.

Witnesseth: Whereas, on the Twenty-Fourth day of February, A.D., 1913, Greene and Griffin Real Estate and Investment Company, an Arizona corporation, executed a certain Promissory Note for Nine Thousand and No/100 dollars, payable on or before February 24, A.D., 1916, and secured by Mortgage on the following described real estate, to-wit:

Lots 1 and 2, Block 3, Churchill's Addition, an

Plaintiff's Exhibit No. 4—(Continued.)

Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps, page 15 thereof;

It is understood, however, that Lot 2 of said Block 3, Churchill's Addition has heretofore been released from the lien of the above referred to Mortgage by Partial Release recorded in Book 21 of Releases, page 101, Records of Maricopa County Arizona;

which said mortgage was recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, pages 303-4; and thereafter on October 7, 1918, extended by J. Gerard, a widow, to Hattie L. Mosher by Extension of Mortgage recorded on October 9, 1919, in Book 114 of Mortgages, page 361, records of Maricopa County, Arizona.

And Whereas, said Promissory note has not been paid, and the said James Dean Collins (commonly known as Dean Collins), a widower, agrees to extend the time of the payment thereof, up to and until the Thirty-First day of March, A.D., 1929.

Now Therefore, in consideration of such extension, the said Hattie L. Mosher agrees to pay said Promissory Note, with the specified rate of interest thereon, upon the said Thirty-First day of March, A.D., 1929, and if paid before said date that she will pay to said James Dean Collins (commonly known as Dean Collins), a widower the interest in full upon said Promissory Note at the rate therein

Plaintiff's Exhibit No. 4—(Continued.)
specified, up to and including said Thirty-First day
of March, A.D., 1929.

In Witness Whereof, the parties hereto have
signed these presents this Thirty-First day of
March, A.D., 1926.

JAMES DEAN COLLINS.

HATTIE L. MOSHER.

State of Arizona
County of Maricopa—ss.

Before me, J. J. Barkley, a Notary Public in and
for the County of Maricopa, State of Arizona, on
this day personally appeared Hattie L. Mosher, a
widow known to me to be the person whose name
is subscribed to the foregoing instrument, and ac-
knowledged to me that she executed the same for
the purposes and consideration therein expressed.

My commission will expire July 14, 1926.

Given under my hand and seal of office this First
day of April, A.D., 1926.

[Seal] J. J. BARKLEY,
Notary Public.

State of Oregon
County of Multnomah—ss.

Before me, Alexander Hamilton, a Notary Public
in and for the County of Marion, State of Oregon,
on this day personally appeared James Dean Col-
lins (commonly known as Dean Collins), a widower,
known to me to be the person whose name is sub-
scribed to the foregoing instrument, and acknowl-

Plaintiff's Exhibit No. 4—(Continued.)
edged to me that he executed the same for the purpose and consideration therein expressed.

My commission will expire March 25/1928.

Given under my hand and seal of office, this 8th day of April, A.D., 1926.

[Seal] ALEXANDER HAMILTON,
Notary Public.

Filed and recorded at request of A. B. C. Davenport, April 13, 1926, at 4:10 P.M., in Book 191 of Mortgages, page 208. Fee #9890.

W. H. LINVILLE,
County Recorder
By WALTER W. SMITH,
Deputy

ASSIGNMENT OF MORTGAGE

Know All Men by These Presents:

That James Dean Collins (commonly known as Dean Collins), a widower, the party of the first part, for and in consideration of the sum of Ten Dollars, to him in hand paid by A. B. C. Davenport, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage bearing date the Twenty-Fourth day of February, 1913, made and executed by Greene and Griffin Real Estate and Investment Company, an Arizona corporation, to J. Gerard, and covering the following described Real Estate in Maricopa County, Arizona:

Plaintiff's Exhibit No. 4—(Continued.)

Lots 1 and 2, Block 3, Churchill's Addition, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps, page 15 thereof;

which said Mortgage was recorded on the Twenty-ninth day of May A.D., 1913, in Book 85 of the Mortgage Records of Maricopa County, Arizona, at pages 303-4 in the office of the County Recorder of said County; and thereafter assigned by J. Gerard to Julia Mosher-Collins by Assignment dated October 7, 1919, and recorded on November 8, 1919, in Book 7 of Assignments, page 159; and thereafter assigned by Julia Mosher-Collins To James Dean Collins, (Commonly known as Dean Collins) by Assignment dated March 1, 1920, and recorded in Book 8 of Assignments, page 372; Records of Maricopa County, Arizona.

It is understood, however, that Lot 2 of said Block 3, Churchill's Addition has heretofore been released from the lien of the above referred to Mortgage by Partial Release dated April 11, 1921, and recorded in Book 21 of Releases, page 101, Records of Maricopa County, Arizona. Together with the obligation therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part his true and lawful attorney, irrevocable, in his name, or otherwise, but at the proper costs and charges of the said party of the second

Plaintiff's Exhibit No. 4—(Continued.)

part, to have, use and take all the lawful ways and means for the recovery of the said money and interest; and in case of a payment to discharge the same as full as the said party of the first part might or could do if these presents were not made.

In Witness Whereof, said party of the first part has signed these presents, the Thirty-first day of March, A.D., 1926.

JAMES DEAN COLLINS.

State of Oregon,
County of Multnomah—ss.

Before me, Alexander Hamilton, a Notary Public in and for the County of Marion, State of Oregon, on this day personally appeared James Dean Collins (Commonly known as Dean Collins), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

My Commission will expire March 25/1928.

Given under my hand and seal of office, this 8th day of April, A.D., 1926.

[Seal] ALEXANDER HAMILTON,
Notary Public.

Filed and recorded at request of A. B. C. Davenport, April 13, 1926, at 4:20 P.M. in Book 12 of Assignments, page 388. Fee #9891.

W. H. LINVILLE,
County Recorder
By WALTER W. SMITH,
Deputy

Plaintiff's Exhibit No. 4—(Continued)

State of Arizona

County of Maricopa—ss.

I, Roger G. Laveen, County Recorder in and for the County and State aforesaid, hereby certify that I have compared the foregoing copies with the record of same in County Recorder's Office, and that the same are full, true and correct copies of such records and of the whole thereof:

Realty Mortgage from Greene & Griffin Real Estate and Investment Company, to J. Gerard, recorded May 29, 1913, in Book No 85 of Realty Mortgages, pages 303-4:

Extension of Realty Mortgage between J. Gerard or Josephine Gerard and Hattie L. Mosher, recorded Oct. 9, 1919, in Book No 114 of Realty Mortgages, pages 361-2:

Assignment of Mortgage from J. Gerard to Julia Mosher-Collins recorded Nov. 8, 1919, in Book No 7 of Assignment of Mortgages, page 159:

Assignment of Mortgage from Julia Mosher-Collins to James Dean Collins, recorded Apr. 18, 1921, in Book No 8 of Assignment of Mortgages, pages 372-3:

Power of Attorney General from Julia Winifred Mosher Collins to Hattie Lount Mosher recorded Apr 2, 1921, in Book No 5 of Power of Attorneys, pages 141-2:

Partial Satisfaction of Mortgage from Greene & Griffin Real Estate and Investment Company, to J. Gerard, recorded Apr. 18, 1921, in Book No 21 of Releases of Mortgages, page 101:

Plaintiff's Exhibit No. 4—(Continued)

Extension of Mortgage between James Dean Collins, and Hattie L. Mosher, recorded April 13, 1926, in Book No 191 of Realty Mortgages, page 208:

Assignment of Mortgage from James Dean Collins to A. B. C. Davenport, recorded April 13, 1926, in Book No 12 of Assignments, page 388: and that the same are a full, true and correct copies of same and of the whole thereof.

Witness my hand and seal of office this 13th day of December. 1940

[Seal]

ROGER G. LAVEEN,
County Recorder
By MARIE RISSE
Deputy

[Endorsed]: Filed Feb. 3, 1941 and Sep. 16, 1941.

DEFENDANT'S EXHIBIT A
CERTIFICATE

State of Arizona,
County of Maricopa—ss.

I, Roger G. Laveen, Recorder of Maricopa County, State of Arizona, do hereby certify that the pages in this folio, numbered from "Page 1-A" to "Page 28-L", inclusive, and attached hereto, are full, true and correct copies of those Twelve (12) certain instruments set forth herein; which are recorded, and on file in the Office of the Recorder of Maricopa County, Arizona; and of the whole there-

Defendant's Exhibit A—(Continued.)

of, and are inscribed in the Books, and on the Pages, as follows, to-wit:

	Page in Folio;
A—Deed from Stroud to J. Gerard, Recorded November 29, 1907, in Book 78 of Deeds, on Page 318	1
B—Resolution of Greene & Griffin Real Estate and Investment Company, in Book 13 of Miscellaneous, on Page 206	3
C—Deed from J. Gerard to Greene, Recorded March 1, 1913, in Book 102 of Deeds, on Page 290	5
D—Mortgage from Greene & Griffin to J. Gerard, Recorded May 29, 1913, in Book 85 of Mortgages, on Page 303	6
E—Deed from Greene & Griffin to Hattie L. Mosher, Recorded July 9, 1914, in Book 110 of Deeds, on Page 179.....	11
F—Extension of Mortgage by Gerard and Mosher, Recorded October 9, 1919 (Executed October 7, 1918), in Book 114 of Mortgages, on Page 361	13
G—Assignment of Mortgage, Recorded November 8, 1919, in Book 7 of Assignments, on Page 159	16
H—Affidavit of J. B. Woodward, Recorded April 18, 1921, at 1:10 P. M. in Book 23 of Miscellaneous, on Page 278	18
I—Lease from Hattie L. Mosher to O'Connell Brothers, Incorporated. Recorded Sep-	

Defendant's Exhibit A—(Continued.)	
tember 19, 1931, in Book 11 of Leases, on Page 326	19
J—Transcript of Judgment in Equity 319, Re- corded January 20, 1937, at 4:47 P. M. in Book 1 of Judgments, Page 288.....	22
K—Certificate of Sale by Special Master, Re- corded March 31, 1939, in Book 57 of Miscellaneous, Page 549	23
L—Deed of Special Master to Julia C. Collins, of Lots 1 and 2, in Block 3, Churchill Ad- dition, Recorded October 2, 1939, in Book 337 of Deeds, on Page 148	25

In Witness Whereof, I have hereunto set my
hand and affixed my Official Seal January 31, 1941.

[Seal]

ROGER G. LAVEEN,

Recorder of Maricopa County,
State of Arizona.

By VIRGIL KING,

Deputy Recorder.

WARRANTY DEED

Territory of Arizona,
County of Maricopa—ss.

Know All Men By These Presents: That Alice
Maud Stroud and H. E. Stroud, her husband of the
County of Los Angeles and State of California for
and in consideration of Thirty-Five Hundred Dol-
lars, to them in hand paid by J. Gerard, a single
woman of the County of Maricopa and Territory of
Arizona, have granted, sold and conveyed, and by

Defendant's Exhibit A—(Continued.)

these presents do grant, sell and convey unto the said J. Gerard all that certain premises described as follows, viz:

All of lots numbered one and two in block numbered three in Churchill Addition to the City of Phoenix in the County of Maricopa and Territory of Arizona, as per map or plat of said Churchill Addition on file and of record in the office of the County Recorder of Maricopa County, Arizona, together with pro rata water right in the Salt River Valley Canal Company attached to said land.

To Have and to Hold, the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said J. Gerard, her heirs and assigns forever;

And we hereby bind ourselves our heirs, executors and administrators, to warrant and forever defend, all and singular, the premises unto the said J. Gerard, her heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof.

Witness our hands this.....day of November, 1907.

[Seal] ALICE MAUD STROUD

[Seal] H. E. STROUD

Signed, sealed and delivered in the presence of

.....
.....
.....

Defendant's Exhibit A—(Continued.)

State of California,

County of Los Angeles—ss.

Before me, W. S. Ewing a Notary Public in and for the County of Los Angeles and State of California on this day personally appeared H. E. Stroud known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 26th day of November A. D. 1907.

[Seal]

W. S. EWING,

Notary Public.

(My commission expires August 5, 1911.)

State of California,

County of Los Angeles—ss.

Before me, W. S. Ewing a Notary Public in and for the County of Los Angeles and State of California on this day personally appeared Alice Maud Stroud wife of said H. E. Stroud known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 26th day of November A. D. 1907.

[Seal]

W. S. EWING,

Notary Public.

(My commission expires August 5th 1911)

Defendant's Exhibit A—(Continued.)

Filed and recorded at request of Mrs. J. Gerard,
Nov. 29, 1907 at 10:47 A. M.

C. F. LEONARD,

County Recorder.

By V. L. VAUGHN,

#7853

Deputy.

Know All Men By These Presents, that at a meeting of the Board of Directors of the Greene & Griffin Real Estate & Investment Company, a corporation of Phoenix, Arizona, held at the office of the company in the City of Phoenix, Arizona, on the 28th day of January, 1909, duly and regularly called and held, the following resolution was duly and unanimously adopted:

Resolved, that the president and vice-president of the corporation, or either of them, be and they are hereby authorized to sell, transfer and convey or mortgage, any and all real or personal property of this corporation, upon such terms and conditions as they may deem to the best interests of the corporation.

Resolved, Further, that the president and the vice-president of this corporation, or either of them, are hereby authorized and empowered to make, execute and deliver for and in behalf of this corporation, all deeds and mortgages, of and upon the property now *now* owned by this corporation, or which it may hereafter acquire, also execute assignments of mortgage, also satisfy and discharge any and all mortgages when they have been paid; and that such execution of such instruments by the

Defendant's Exhibit A—(Continued.)

president and vice-president, or either of them, duly attested by the secretary with the seal of the corporation affixed thereto, shall be binding upon and shall be taken as the due execution of such instrument on the part of the corporation; that the president and vice-president of this corporation, or either of them, be and they are hereby authorized to satisfy and discharge on the records of the County Recorder's office of Maricopa County, Arizona, any and all mortgages, when same shall have been paid, and the said satisfaction shall have the same force and effect as though made in writing, signed by the president or vice-president, and attested by the secretary of this corporation under its corporate seal.

Be It Further Resolved, that all mortgages and deeds heretofore executed, by the president and vice president of this corporation, or either of them, and attested by the secretary thereof, with the corporate seal affixed, be and they are hereby ratified and confirmed as the act and deed of this corporation and binding upon it, the same as if this resolution were adopted prior to the execution of such instrument.

Witness my hand this 28th day of January, 1909.
[Corporate Seal]

L. S. THOMPSON,

Secretary of the Greene &
Griffin Real Estate and
Investment Company.

Defendant's Exhibit A—(Continued.)

Territory of Arizona,
County of Maricopa—ss.

Before me, H. W. Berryman, a Notary Public in and for the County and territory aforesaid, on this day personally appeared L. S. Thompson, known to me to be the person whose name is subscribed to the foregoing instrument, as the Secretary of the said Greene & Griffin Real Estate and Investment Company, and he as such secretary, acknowledged to me that he executed said instrument for the purpose and consideration therein expressed as its free act and deed and by him voluntarily executed.

Given under my hand and seal this 28th day of January, A. D. 1909.

[Notarial Seal]

H. W. BERRYMAN,
Notary Public.

My commission expires the 7th day of July, 1912.

Filed and recorded at request of R. H. Greene
Feb. 6, 1909, at 4:41 P. M.

C. F. LEONARD,
County Recorder.

1009

WARRANTY DEED

State of Arizona,
County of Maricopa—ss.

Know All Men By These Presents:

That J. Gerard, a widow since March 9th, 1900, of the City of Phoenix, Arizona for and in consideration of Ten (\$10.00) Dollars, to her in hand paid by Greene & Griffin Real Estate and Investment

Defendant's Exhibit A—(Continued.)

Company a Corporation of Phoenix, Arizona has granted, sold and conveyed, and by these presents does grant, sell and convey unto the said Greene & Griffin Real Estate and Investment Company all that certain premises described as follows, viz:

Lots one (1) and two (2) in Block three (3) of Churchill Addition to the City of Phoenix, Arizona, as per Map or plat of said Addition on file and of record in the office of the Recorder of Maricopa County, Arizona

To Have and to Hold, the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Greene & Griffin Real Estate and Investment Company, its successors and assigns forever. And she hereby binds herself her heirs, executors and administrators, to warrant and forever defend, all and singular, the premises unto the said Greene & Griffin Real Estate and Investment Company its Successors and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof except for taxes for the year 1913.

Witness my hand this 24th day of February A.D. 1913.

[Seal]

MRS. J. GERARD.

Signed, sealed and delivered in the presence of

[Seal]

.....

[Seal]

.....

[Seal]

.....

Defendant's Exhibit A—(Continued.)

State of Arizona,

County of Maricopa—ss.

Before me, M. C. Barnum, a Notary Public in and for the County of Maricopa State of Arizona, on this day personally appeared J. Gerard, a widow known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office this 24th day of February, A.D. 1913.

[Seal]

M. C. BARNUM,

Notary Public.

My Commission Expires February 18, 1916.

Filed and recorded at request of Greene & Griffin, Mar. 1, 1913 at 4:02 P.M.

VERNON L. VAUGHN,

County Recorder.

J. D. HENDERSON,

Deputy Recorder.

#2177.

Compared

Read by W. H. L.

Read to E. M. J.

REALTY MORTGAGE

Know All Men, That Greene & Griffin Real Estate and Investment Company, a corporation, of Phoenix, Arizona, party of the first part, in consideration of Nine thousand (\$9,000.00) Dollars, in hand paid by

Defendant's Exhibit A—(Continued.)

J. Gerard, of Phoenix, Arizona, party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said party of the second part, her heirs and assigns forever, the following real estate, lying and being in the County of Maricopa and State of Arizona, and known and described as:

Lots one (1) and two (2), Block three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona.

Together with all the privileges and appurtenances to the same belonging.

To have and to hold the same to the said party of the second part, her heirs and assigns forever.

And the said Greene & Griffin Real Estate and Investment Company, party of the first part, hereby covenant that it is well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple and has good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered, and that it will forever warrant and defend the same to the party of the second part, her heirs and assigns, against all claims whatsoever.

Provided always, and these presents are upon this express condition, that if the said party of the first part, its successors and assigns shall pay or cause to be paid to the said party of the second part, her heirs, executors, administrators or assigns, the just

Defendant's Exhibit A—(Continued.)

and full sum of Nine Thousand (\$9,000.00) Dollars, according to the conditions of one certain promissory note bearing even date herewith, executed by the said Greene & Griffin Real Estate and Investment Company, party of the first part, to the said party of the second part, and shall moreover pay annually to the proper officers all taxes, which shall be assessed on the said real estate on or before the date upon which such taxes shall have become delinquent, and insure and keep insured the buildings thereon against loss or damage by fire in the sum of dollars or over in insurance companies to be selected by the said party of the second part, her heirs or assigns, and the policy or policies of such insurance to be payable to the mortgagee as her interest may appear, and in default thereof it shall be lawful for the said party of the second part, her heirs or assigns, to effect such insurance, and the premium and premiums and other legal expenses, fees, costs and charges paid for effecting the same, together with interest thereon at *th* rate of twelve (12) per cent per annum, shall be a lien upon the said mortgaged premises, added to the amount of the said note and secured by these presents until the payment of said note, then these presents shall be null and void. But in case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, or in case of the failure on the part of said party of the first part to keep or perform any

Defendant's Exhibit A (Continued)

other agreement, stipulation or condition herein contained, or contained in the note above described, then in such case the whole amount of the said principle sum shall, at the option of the said party of the second part, her representatives or assigns, be deemed to have become due, and the same with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid; and it shall be lawful in such case for said party of the second part, her heirs, executors, administrators or assigns, to grant, sell and convey the said real estate, with the appurtenances thereunto belonging, at public auction or vendue, after giving thirty days notice of the time and place of such sale, by publishing the same in a newspaper published within the county where the mortgaged premises are situated; and on such sale to make and execute to the purchaser or purchasers, his, her or their heirs and assigns, good and sufficient deeds of conveyance in the law, conveying to such purchaser or purchasers all the title, interest and estate of the mortgagors in and to said land and premises, without redemption; and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said note, together with all costs and charges, rendering the surplus moneys, if any there be, to the said party of the first part, its successors and assigns, after deducting the costs of such vendue as afore-

Defendant's Exhibit A (Continued)

said; and in case of the foreclosure of this mortgage by suit, the plaintiff in the action shall be entitled to the appointment of a receiver of said mortgaged property, without bonds to take possession of the same and collect the rents and profits thereof, pending foreclosure proceedings; and in case of foreclosure by suit or public sale, the said party of the first part, for itself, its representatives or assigns, does covenant and agree that it will pay to the said party of the second part, her representatives or assigns, in addition to the taxable costs in the foreclosure suit Nine hundred (\$900) dollars attorneys fees.

In Witness Whereof, Greene & Griffin Real Estate and Investment Company has caused these presents to be executed in its corporate name by its president, and its corporate seal affixed, attested by its Secretary this 24th day of February A. D. 1913.

(Corporate Seal)

GREENE & GRIFFIN REAL
ESTATE AND INVESTMENT
CO.,

By R. H. GREENE,
Its President

Attested by:

J. F. TRACY,
Its Secretary.

State of Arizona,
County of Maricopa—ss.

Before me, M. C. Barnum, a Notary Public in and for said County, Arizona State, on this day person-

Defendant's Exhibit A (Continued)

ally appeared R. H. Greene and J. F. Tracy, known to me to be the persons whose names are subscribed to the foregoing instrument as President and Secretary of the Corporation described in the foregoing instrument, and as such President and Secretary acknowledged to me that they executed the same for said corporation for the purpose and consideration therein expressed, as its free act and deed, and by each of them voluntarily executed.

Given under my hand and seal of office, this 24th day of February A. D. 1913.

[Seal]

M. C. BARNUM,

Notary Public.

My Commission expires February 18, 1916.

Filed and recorded at request of Josephine Gerard,
May 29, 1913, at 9:50 A.M.

VERNON L. VAUGHN,

County Recorder,

By J. D. HENDERSON,

Deputy

5425

Compared

Read by W H L

Read to E. M. J.

WARRANTY DEED

State of Arizona,

County of Maricopa—ss.

Know All Men by These Presents: That Greene & Griffin Real Estate and Investment Company, a cor-

Defendant's Exhibit A (Continued)

poration of Arizona, of the County of Maricopa, State of Arizona, for and in consideration of the sum of Ten Dollars, and other valuable consideration to it in hand paid by Hattie L. Mosher (widow) have granted, sold and conveyed, and by these presents does grant, sell and convey unto the said Hattie L. Mosher all that certain premises described as follows, viz:

Lots (1) One and (2) Two in Book (3) Three of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said Addition on file and of record in the office of the recorder of Maricopa County, Arizona.

To Have and To Hold, the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said Hattie L. Mosher, her heirs and assigns forever.

And it hereby binds itself, its heirs, executors and administrators, to warrant and forever defend, all and singular, the premises unto the said Hattie L. Mosher, her heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof.

Except a certain mortgage Dated Feb. 24'', 1913, Recorded May 29'', 1913, at 8:50 A.M., in Book 85 of Mortgages at page 303.

Except taxes for 1914.

Except Paving Lien on Lot (1) amounting to \$600.06.

Defendant's Exhibit A (Continued)

Except paying lien on Lot (2) Two amounting to \$426.89.

In Witness Whereof, Greene & Griffin Real Estate and Investment Company has caused these presents to be executed in its corporate name by its Vice-President and its Corporate seal to be affixed, attested by its Secretary this first day of July A. D. 1914.

[Corporate Seal]

GREENE & GRIFFIN REAL
ESTATE AND INVESTMENT
COMPANY

By V. C. COOK

Its Vice-President.

Attested:

By J. F. TRACY,

Its Secretary

State of Arizona,
County of Maricopa—ss.

Before me, M. C. Barnum, a Notary Public in and for said County, State of Arizona, personally appeared V. C. Cook and J. F. Tracy known to me to be the persons whose names are subscribed to the foregoing instrument as Vice-President and Secretary of the Corporation described in the foregoing instrument, and as such Vice-President and Secretary acknowledged to me that they executed the same, for said corporation for the purpose and consideration therein expressed, as its free act and deed, and by each of them voluntarily executed.

Defendant's Exhibit A (Continued)

Given under my hand and seal of office this 7th day of July A. D. 1914.

[Seal] M. C. BARNUM,
Notary Public.

(My Commission Expires February 18, 1916.)

Filed and recorded at request of Galpin & Hart,
Jul 9, 1914, at 11:15 A.M.

VERNON L. VAUGHN,
County Recorder
By J. D. HENDERSON,
Deputy.

6982

Compared

Read by C. S. B.

Read to L. J. H.

EXTENSION OF REALTY MORTGAGE

Memoranda of Agreement between J. Gerard, whose full name is Josephine Gerard, a widow, and Hattie L. Mosher, a widow, both of Phoenix, Arizona.

Witnesseth:

Whereas, on the 24th. day of February, 1913, the Greene and Griffin Real Estate and Investment Company executed a certain promissory note for Nine Thousand Dollars (\$9,000.00) of even date therewith, as follows:

Phoenix, Arizona, Feb. 24th. 1913.

No.

On, or before, three (3) years after date, without grace, for value received, Greene & Griffin R. E.

Defendant's Exhibit A (Continued)

and Inv. Co. promise to pay to J. Gerard, of Phoenix, Ariz. or order, the sum of Nine Thousand (\$9,000.00) Dollars, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; and should the interest not be paid semi-annually, then the whole sum of principal, and interest, shall become immediately due and payable, at the option of the holder of this note. Should suit be brought to recover on this note Greene & Griffin R. E. & I. Co. promise to pay as attorney's fees \$900.00 additional on amount found due on this note. Principal and interest payable in U. S. Gold Coin. All payable at Phoenix, Arizona.

\$1000.00 or more may be paid
on the principal of this note
at any time.

GREENE & GRIFFIN REAL
ESTATE AND INVESTMENT
COMPANY.

R. H. GREENE,
Prest.

J. F. TRACY,
Secy.

\$9,000.00 Due February 24th. 1916.

and secured the same by a mortgage on the following described real estate, to-wit:

Lots One (1) and Two (2) in Block Three (3)
of Churchill's Addition to the City of Phoenix,
as per map, or plat of said addition on

Defendant's Exhibit A (Continued)

file and of record in the office of the County Recorder of Maricopa County, State of Arizona, which said mortgage was recorded in the office

of the said County Recorder in Book 85 of Mortgages at pages 303 and 304, on May 29th. 1913, at the request of the said Josephine Gerard;

And whereas, said Greene & Griffin Real Estate and Investment Company, on the First day of July, 1914, sold, and by Warranty Deed conveyed said real estate to the said Hattie L. Mosher subject to said mortgage, and paying lien on Lot One (1) amounting to \$600.06, and paying lien on Lot Two (2) amounting to \$426.89, which said deed was recorded in the office of the County recorder of Maricopa County, Arizona, in Book 110 of Deeds at page 179 on July 9th, 1914;

And whereas, said Greene & Griffin Real Estate paid, and the said J. Gerard, mortgagee and holder of the said note agrees to extend the time of payment thereon up to, and until, the 24th. day of February, 1928;

Now, Therefore, in consideration of said extension, said Hattie L. Mosher agrees to pay said promissory note with the specified rate of interest thereon upon the said 24th. day of February, 1928.

In Witness Whereof, the parties hereto have hereunto set their hands, and seals, at Phoenix, Arizona, this 7th day of October, 1918.

J. GERARD,
HATTIE L. MOSHER.

Defendant's Exhibit A (Continued)

State of Arizona,

County of Maricopa—ss.

Before me, J. B. Woodward, a notary public in and for the County of Maricopa, State of Arizona, on this day personally appeared J. Gerard, whose full name is Josephine Gerard and Hattie L. Mosher, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7th day of October, 1919.

[Seal] J. B. WOODWARD,
Notary Public.

My Commission expires February 16th, 1920.

Filed and recorded at request of Hattie L. Mosher, Oct. 9, 1919, at 3:15 P.M.

EDITH M. JACOBS,
County Recorder.

By G. H. BOEHM,
Deputy.

17365

Compared

Read by O. A. B.

Read to G. M. P.

ASSIGNMENT OF MORTGAGE

Know All Men by These Presents: That I, J. Gerard, whose full name is Josephine Gerard, widow, the party of the first part, for and in con-

Defendant's Exhibit A (Continued)

sideration of the sum of Nine Thousand Dollars, (\$9,000.00) to me in hand paid by Julia Mosher-Collins, the party of the second part, the receipt whereof is hereby acknowledged do by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage, bearing date the 24th day of February, one thousand nine hundred and thirteen, made and executed by The Greene and Griffin Real Estate and Investment Company, to J. Gerard, (whose full name is Josephine Gerard) together with the note in said mortgage described, and the money due, and to become due thereon, which said mortgage was recorded on the 29th day of May, 1913, in Book 85 of the Mortgage Records of Maricopa County, Arizona, at pages 303 and 304.

Together with the note therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part her true and lawful attorney, irrevocable, in her name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest, and in case of a payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In Witness Whereof, said party of the first part

Defendant's Exhibit A (Continued)
has signed these presents the 7th day of October,
A. D., 1913(9).

J. GERARD.

State of Arizona
County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in
and for the County of Maricopa, State of Arizona,
on this day personally appeared J. Gerard, whose
full name if Josephine Gerard known to me to be
the person whose name is subscribed to the fore-
going instrument, and acknowledged to me that
she executed the same for the purpose and con-
sideration therein expressed.

Given under my hand and seal of office this 7th
day of October, A. D., 1919.

[Seal] J. B. WOODWARD,
Notary Public.

My Commission expires February 16th. 1919.

Filed and recorded at the request of H. L.
Mosher, Nov 8, 1919 at 11:55 A. M.

EDITH M. JACOBS,
County Recorder.

By G. H. BOEHM,
Deputy Recorder.

#19265

Compared

Read by O. A. B.

Read to G. M. V.

Defendant's Exhibit A (Continued)

AFFIDAVIT

State of Arizona,
County of Maricopa—ss.

J. B. Woodward, on oath states; That the certificate of J. Gerard's assignment of mortgage to Julia Mosher Collins, of date October 7th, 1919, and of record in the office of the County Recorder of Maricopa County, Arizona, in Book Seven of Assignments at page 159, is erroneous; in that, the statement therein, "My commission expires February 16th, 1919", should have been February 16th, 1920, to correspond with the truth and record facts of same.

J. B. WOODWARD.

Subscribed and sworn to before me, a Notary Public in and for Maricopa County, Arizona, this March 3, 1920.

[Seal] A. W. LENNARD,
Notary Public.

My commission expires April 14, 1923.

Filed and recorded at request of Hattie Mosher, April 18, 1921, at 1:10 P. M.

EDITH M. JACOBS,
County Recorder.

By WALTER W. SMITH,
Deputy.

#7636

Compared

Read by O. A. B.

Read to G. M. V.

Defendant's Exhibit A (Continued)

LEASE

This Indenture made this 17th day of September, 1931, by and between H. L. Mosher, party of the first part, and O'Connell Brothers, Inc., a corporation, Arizona, party of the second part

Witnesseth:

That the said party of the first part does by these presents lease and demise unto the said party of the second part, all of

Lot two (2), in Block Three (3), Churchill Addition, an addition to the City of Phoenix, Maricopa County, State of Arizona,

for the term of five (5) years from the 1st day of October, 1931, at the monthly rental of the sum of Seventy-Five (\$75.00) Dollars per month, payable in advance on the first day of each and every month, during the term hereof. And second party is hereby granted the option to renew this lease for a period of two years from the expiration date hereof at the rental of One Hundred (\$100.00) per month, under the same terms and conditions provided, herein, provided that second party does sixty (60) days before the expiration of the original term hereof give to first party in writing its intention to renew.

It Being Agreed as Follows:

1st. That second party shall have the right of possession of said property rent free to the 1st day of October, 1931, from the date of this lease.

2nd. That second party will remove all cement

Defendant's Exhibit A (Continued)

work and level the lot seven inches below city side walk grade.

3rd. That the second party will cause to be erected on said premises a building, placing the North side of said building on the North boundary of said lot, but second party shall have the right to erect the building in such a way as to protect itself for proper lighting facilities on all sides.

4th. At the expiration of the term of this lease, or the expiration of the term of renewal thereof, in case renewal is had, second party shall remove all improvements placed on said property. The building erected on said premises by second party shall conform with the building restrictions and ordinances of the City of Phoenix, State of Arizona.

5th. In addition to the monthly rental described in this lease to be paid by second party to first party for the premises herein leased, the second party agrees to pay all taxes assessed against said above described property from the 1st day of October, 1931, and during the period of the term of this lease, and second party further agrees to pay any new improvement assessments made against said property pro rated during the term of this lease.

It Is Hereby Agreed by second party that should the second party fail to make payment of the rental due hereunder when due, then ten per cent (10%) additional shall be paid on the amount due for each and every month, if such failure shall occur.

Defendant's Exhibit A (Continued)

It is Understood And Agreed by the parties to this lease that the building, and/or material of any kind placed on the ground above described shall be and remain the property of the party of the second part, and rental is to be paid until removed.

In Witness Whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

H. L. MOSHER,

Party of the First Part

O'CONNELL BROTHERS, INC.

By JOE O'CONNELL, Pres.,

MARY O'CONNELL, Sec'y.

Parties of the Second Part.

(interlined before signed)

H. L. MOSHER

H. L.

O'CONNELL BROS.,

By JOE O'CONNELL,

Pres.

MARY O'CONNELL,

Secretary.

State of Arizona,

County of Maricopa—ss.

Before me, a Notary Public in and for the County of Maricopa, State of Arizona, personally appeared H. L. Mosher, Known to me to be the person who executed the foregoing lease, and acknowledged to me that she executed said lease for the purposes and consideration therein expressed.

Defendant's Exhibit A (Continued)

Given under my hand and seal of office, this 19th day of September, 1931.

[Seal] B. L. TATE,
Notary Public.

My commission expires Aug. 18, 1935.

State of Arizona,
County of Maricopa—ss.

Joe O'Connell, being on oath first duly sworn, deposes and says: That he is the President of O'Connell Brothers, Inc., a corporation, and under authority of said corporation has signed the foregoing lease and makes this acknowledgment on behalf of said corporation that same was executed for the purposes and consideration therein expressed.

JOE O'CONNELL.

Subscribed and sworn to before me this 19th day of September, 1931.

[Seal] B. L. TAIT,
Notary Public.

My commission expires Aug. 18, 1935.

Filed and recorded at request of Herman Lewkowitz, Sep. 19, at 2:35 p. m., 1931.

W. H. LINVILLE,
County Recorder.

By JOE L. SCHMITT, Jr.,
Deputy.

#30966

Compared, read to RR, read by VHS.

Defendant's Exhibit A (Continued)

TRANSCRIPT OF JUDGMENT

In the United States District Court for the District
of Arizona

Number and Docket: E-319

Judgment Debtor: Hattie L. Mosher,

Judgment Creditor: Julia C. Collins,

Date of Judgment: January 11, 1937, 5:00 p. m.

Amount of Judgment: \$900.00, With interest from
date of Judgment, \$34,148.83, With interest at 8%
per annum from October 7, 1936.

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States
District Court for the District of Arizona, do hereby
certify that the above and foregoing is a true copy
of Judgment Docket Entry in case No. E-319
Phoenix, Julia C. Collins, a minor, by Coit I.
Hughes, her guardian ad litem, vs. Hattie L.
Mosher, as the same appears from the original rec-
ord remaining in my office.

Witness my hand and the seal of said Court this
20th day of January, 1937.

[Seal]

EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS,

Chief Deputy Clerk.

Defendant's Exhibit A (Continued)

Filed and recorded at request of Coit I. Hughes,
Jan. 20 at 4:47 P. M., 1937.

W. H. LINVILLE,

County Recorder.

By ROGER G. LAVEEN,

#2763 Deputy.

Compared, read to M. S., read by V. H. S.

District Court of the United States, District of
Arizona

No. Equity-319-Phoenix

JULIA C. COLLINS, a minor, by Coit I. Hughes,
her Guardian Ad Litum,

Plaintiff,

vs.

WILLIAM A. VAN BENSCHOTEN, as Guardian
of the Person and Estate of RICHARD I.
VAN BENSCHOTEN, a minor, and VAN
BENSCHOTEN ESTATES, INCORPORAT-
ED, a corporation, HATTIE L. MOSHER,
JOE O'CONNELL and JESSIE B. O'CON-
NELL, his wife,

Defendants.

SPECIAL MASTER'S CERTIFICATE OF
SALE ON FORECLOSURE

I, J. S. Wheeler, the Special Master in the above
entitled cause, having been duly appointed by the

Defendant's Exhibit A (Continued)

Honorable Dave W. Ling, the presiding judge herein, do hereby certify that under and by virtue of an Execution of Judgment and Order of Sale, issued out of the District Court of the United States, District of Arizona, February 13, 1939, in the above entitled action, wherein Julia C. Collins, Plaintiff, recovered judgment against Hattie L. Mosher, defendant, on December 28, 1936, and to me, as such Special Master, duly directed and delivered, whereby I was commanded to seize and sell the property hereinafter described, according to law, and to apply the proceeds towards the satisfaction of the costs of the sale and of the amount of the judgment with its accrued interests and costs, which were the aggregate sum of \$41,957.23 on the date of sale, March 17, 1939.

Acting under the orders of this court I duly levied on the real estate foreclosed in this action and seized the same and on March 17, 1939, at the hour of 10:00 A. M. at the Court House, door, in the City of Phoenix, Maricopa County, Arizona, in the said United States Federal District. I duly sold at Public Outcry, after due and legal notice, to Julia C. Collins, the plaintiff, in this action, she having made the highest and best bid therefor at such sale, her bid being the sum of \$41,957.23, which was the whole sum due under the said judgment.

The real estate in said judgment, order of sale, the legal notices for the sale and sold by me at the aforesaid time and date, is described as follows, to-wit:

Defendant's Exhibit A (Continued)

"Lots One (1) and Two (2), in Block Three (3), of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder in Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging."

And I do hereby further certify that the said property was sold in one lot, or parcel, and that the sum of \$41,957.23 was the highest and best bid made, and being in satisfaction of said judgment, interest and costs of sale, and that the same is subject to redemption within six months from the date of the sale thereof pursuant to the Statute in such case made and provided.

Given under my hand this 31st day of March, 1939, at the hour of 3:05 P. M.

J. S. WHEELER,

Special Master in Equity 319,
Phoenix.

Filed and Recorded at request of George F. MacDonald, Mar. 31, 1939, at 3:24 P. M.

ROGER G. LAVEEN,

County Recorder.

By,

#8987

Deputy.

Compared, read to A. C., read by R. H.

Defendant's Exhibit A (Continued)

[Title of District Court and Cause.]

DEED OF SPECIAL MASTER

This Indenture, made on the day of the signing and execution thereof, by and between J. S. Wheeler, as Special Master in Equity 319 Phoenix, District of Arizona, duly appointed as such Special Master by the Honorable Presiding Judge, Dave W. Ling, December 28, 1936, in the Judgment in said cause which was filed with the Clerk of the Court January 11, 1937; Grantor, and Julia C. Collins, single, residing in the City of Portland, State of Oregon; Grantee:

Witnesseth, whereas the above judgment was based on a suit filed for the above grantee by her Guardian ad litem, Coit I. Hughes, on May 8, 1935; and an amended complaint filed November 14, 1935; and a second amended complaint filed December 30, 1935;

Whereas, the prayer in said complaints was granted and said judgment Ordered, Adjudged and Decreed that J. S. Wheeler be appointed the Special Master of this Court to sell the property foreclosed in the judgment at Public Outcry; and a transcript of this judgment was recorded January 20, 1937 at 4:47 P. M. in the Office of the Recorder of Maricopa County, in the District of Arizona, in Book 1, of Judgments, at Page 288 thereof, said judgment having been certified from the entry of the judgment in Judgment Docket Book No. 2, Page 115, by the Clerk of this Court.

Defendant's Exhibit A (Continued)

Whereas, in the "Findings of Fact" signed by Judge Ling December 28, 1936, and filed in this court January 11, 1937, it sets forth that Hattie L. Mosher received a deed to Lots 1 and 2, Block 3, Churchill Addition to the City of Phoenix, Arizona, July 1, 1914, and said deed was recorded in the Office of the Recorder of Maricopa County, Arizona, July 9, 1914, in Book 110 of Deeds, at Page 179, and said deed, a warranty, recites that the grantee is Hattie L. Mosher, a widow; and she is now, and has been ever since that date, Hattie L. Mosher, a widow; and

Whereas, February 13, 1939, and Execution of Judgment and Order of Sale was issued out of this court and the Special Master made his Return March 29, 1939, setting forth that he had sold the property to the plaintiff, Julia C. Collins, March 17, 1939, and delivered to her a Certificate of Sale March 31, 1939, at 3:05 P. M. which said Certificate of Sale was recorded in the Office of the Recorder of Maricopa County, District of Arizona, March 31, 1939, at 3:24 P. M. in Book 57 of Miscellaneous, at Page 549; that the price bid and accepted was \$41,957.23; and

Whereas, at said sale the said Julia C. Collins, who made the highest and best bid for the said property, described below, became the purchaser thereof, for the sum of \$41,957.23; and

Whereas, George F. Macdonald, Attorney for Julia C. Collina, filed the "Plaintiff's Petition for

Defendant's Exhibit A (Continued)

Confirmation of Sale" March 31, 1939, at 11:00 A. M. and the "Order Confirming Sale" was signed by the Presiding Judge, Dave W. Ling, March 31, 1939, and both the Petition and the Order were filed with the Clerk of the Court at 11:00 A. M. March 31, 1939; and

Whereas, no redemption has been made within the time allowed by law for redemption, and no Notice of Redemption by any judgment creditor of Hattie L. Mosher, or any other person having a right to redeem, has been served on this Grantor, or recorded in the office of the Recorder of Maricopa County, and the time for such serving and recording of Notices of Intention to redeem has expired, and all such rights did expire September 18, 1939, that being the last day of rights of redemption in any form, either by the former owner, or held by any other person or persons alleging an interest in the property; and

Whereas, by virtue of the foregoing and by virtue of the orders of the court, as set forth on page two of the Order Confirming Sale, that the sale was made final and absolute and that after the execution of the deed to the property that "all rents and incomes and benefits therefrom shall accrue to Julia C. Collins", the said Julia C. Collins is now entitled to a deed as ordered by the court, and as provided by law; now

Therefore, for and in consideration of the sum of Forty-one Thousand, Nine Hundred and Fifty-

Defendant's Exhibit A (Continued)

seven Dollars and Twenty-three Cents (\$41,957.23), the price bid, accepted, and received at said sale as the whole sum due under said judgment in Equity 319, Phoenix, said consideration being the payment of the money due under said mortgage held by the Grantee against Hattie L. Mosher and the property described below; all according to the orders of the court in the Judgment which sets forth on page 3, line 8, that, "the said two lots shall be sold in payment or satisfaction of the plaintiff's said debt"; now

I, J. S. Wheeler, as Special Master and Grantor herein, have bargained, granted, transferred, sold and conveyed to Julia C. Collins, single, of Portland, Oregon, and to her heirs, assigns, and successors, forever, the following described property, to-wit:

"Lots One (1) and Two (2), in Block Three (3), of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder of Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging."

To Have And To Hold, the above described premises, together with all and singular the rights, privileges, and appurtenances thereto in any wise belonging, or in any manner appertaining, unto the said Julia C. Collins, her heirs, assigns, and successors, forever.

Defendant's Exhibit A (Continued)

In Witness Whereof, the said Grantor, J. S. Wheeler as Special Master in Equity 319, has executed these presents on the Second day of October, in the Year of Our Lord, Nineteen Hundred and Thirty Nine (October 2, 1939).

J. S. WHEELER,

Special Master in Equity 319,
Phoenix.

State of Arizona,
County of Maricopa—ss.

Before me, Virgil King, a Notary Public, in and for the County of Maricopa, State of Arizona, on this day, October 2, 1939, personally appeared J. S. Wheeler, known to me to be the person of that name set forth in the foregoing instrument, as Special Master in Equity 319, in the United States District Court, District of Arizona, at Phoenix, and who subscribed his name thereto in my presence and then and there acknowledged to me that he signed and executed this instrument for the purposes and consideration therein expressed, and who did, then and there, in my presence, affix thereto \$42.00 in United States Revenue Stamps, and duly cancel the same.

[Seal]

VIRGIL KING,

Notary Public.

My commission expires August 25, 1943.

I. R. S. \$42.00 Cancelled.

Defendant's Exhibit A (Continued)

Filed and recorded at request of Julia C. Collins,
Oct. 2, 11:14 a. m. 1939.

ROGER G. LAVEEN,
County Recorder.

By

#25435 Deputy.

Compared, read to M. S., read by R. H.

[Endorsed]: Filed Feb. 3, 1941, and Sep. 16, 1941.

DEFENDANT'S EXHIBIT D

[Title of District Court and Cause.]

ORDER FOR DECREE PRO CONFESSIO

This cause, having come on regularly for hearing on the motion of George F. Macdonald, as attorney for the plaintiff in the above entitled cause to take the Bill of pro confessio, and it appearing to the court that the plaintiff's Bill of Complaint was filed on the 8th day of May, 1935, and that on the 22nd day of May, 1935, the United States Marshal for the District of Arizona filed the subpoena ad respondendum with his return showing that on the 22nd day of May, 1935, a copy of the Bill of Complaint was filed in the above entitled cause and served on the defendant, Hattie L. Mosher. It is therefore,

Defendant's Exhibit D (Continued)

Ordered and Decreed that plaintiff's Bill of Complaint be taken pro confessio against the defendant, Hattie L. Mosher.

Done in open court this 20 day of July, 1936.

DAVE W. LING

Judge of the United States
District Court.

[Endorsed]: Filed Jul. 20, 1936.

[Title of District Court and Cause.]

FINDINGS OF FACT

This matter came on regularly for hearing on the 7th day of December, 1936, before the Hon. Dave W. Ling, as Judge of the United States District Court in and for the district of Arizona; the plaintiff appearing through Coit I. Hughes, her Guardian Ad Litem, by his attorneys, George F. Macdonald and John W. Ray; and it appearing to the Court that the defendant, Hattie L. Mosher, had been duly served with process, as provided by law, and having failed to answer within the time provided or to make any appearance at the hearing upon motion of the plaintiff, this Court entered a Decree Pro Confessio against the defendant, Hattie L. Mosher, on the 20th day of July, 1936; and it further appearing to the Court that this cause of action had upon motion of the plaintiff been dismissed without prejudice against the defendants, William A. Van Benschoten, as Guardian of the

Defendant's Exhibit D (Continued)

person and estate of Richard I. Van Benschoten, a minor, and Van Benschoten Estates Incorporated, a corporation, Joe O'Connell and Jessie B. O'Connell, his wife; the allegations of the complaint as to defendant Hattie L. Mosher, who did not appear or answer, are under the Equity rules (17), taken as confessed to be true, and evidence oral and documentary having been introduced by the plaintiff in support of the allegations of plaintiff's Complaint, at the conclusion of which the Court, having considered the evidence and being fully advised in the premises, finds:

That Julia C. Collins is a minor under the age of 21 years and is a citizen and resident of Portland, Oregon, that said plaintiff is the sole heir and only child of Julia Mosher Collins, who died domiciled in the State of Oregon on the 4th day of May, 1920; that Coit I. Hughes is the duly qualified and acting Guardian Ad Litum for the said Julia C. Collins, a minor, to act for and in her behalf in the above entitled cause.

That on or about the 24th day of February, 1913, in Maricopa County, State of Arizona, Green & Griffin Real Estate and Investment Company, a corporation, acting by and through its agents, having a valuable consideration executed and delivered to J. Gerard of Phoenix, Arizona, a certain promissory note in the sum of Nine Thousand (\$9,000.00) Dollars with interest thereon at the rate of eight (8%) percentum per annum until paid, said inter-

Defendant's Exhibit D (Continued)

est payable semi-annually, if not so paid to be added to the principal and become a part thereof and bear interest at the same rate; and further agreed to pay an attorney fee in the sum of Nine Hundred (\$900.00) dollars, in addition to the amount further due on said note;

That at the same time and part of the same transaction, said corporation, acting by and through its agents, in order to secure the payment of said promissory note together with interest and attorneys fee thereon, as provided in said note, executed and delivered to said J. Gerard a real estate mortgage in the sum of Nine Thousand (\$9000.00) Dollars on the following described property:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging.”

which said mortgage is set out in plaintiff's Complaint; said mortgage was duly signed by said corporation and the corporate seal placed thereon; on the 24th day of February, 1913, said mortgage was duly recorded in the office of County Recorder, Maricopa County, State of Arizona, in Book 85 of Mortgages at Page 303 thereof; but thereafter, on the 1st day of July, 1914, Green & Griffin Real Estate and Investment Company, a corporation, for

Defendant's Exhibit D (Continued)

good and sufficient consideration, executed and delivered to Hattie L. Mosher a deed to the property described in plaintiff's Complaint, subject to said \$9,000.00 mortgage in favor of J. Gerard, which said deed was duly recorded in the office of the County Recorder, Maricopa County, State of Arizona, on the 9th day of July, 1914, in Book 110 of Deeds, Page 179 thereof; that thereafter Hattie L. Mosher obtained a written extension of said mortgage to February 24, 1928, and on the 9th day of October, 1919, said extension of mortgage was duly recorded in the office of County Recorder, Maricopa County, State of Arizona, in Book 114 of Extension of Mortgages, at Page 361 thereof; said extension was conditioned that Hattie L. Mosher agreed to pay said promissory note and interest;

That on the 7th day of October, 1919, J. Gerard, for due and sufficient consideration, executed and delivered an assignment of said mortgage, recorded in Book 85 of Mortgages, at Page 303 thereof, to Julia Mosher Collins, which said assignment of Mortgage was duly recorded in the office of the County Recorder, Maricopa County, State of Arizona, on the 8th day of November, 1919, in Book 7 of Assignment of Mortgages, Page 159 thereof;

That on the 4th day of May, 1920, the date of the death of Julia Mosher Collins, mother of this plaintiff, that the said Julia Mosher Collins was the owner of the assignment of mortgage that was set forth in plaintiff's Complaint and which appears

Defendant's Exhibit D (Continued)
of record in Book 7 of Assignment of Mortgages,
page 159 thereof.

That by reason of the laws of descent and distribution, by being the sole heir and only child of the said Julia Mosher Collins, deceased, this plaintiff is the owner of said promissory note and mortgage hereinabove referred to; and that said note and mortgage are now due, owing and wholly unpaid by the said Hattie L. Mosher, and that said mortgage is a valid and subsisting lien on the property set forth or described in plaintiff's Complaint and is a prior and superior lien on said property. That Nine Hundred (\$900.00) Dollars is a reasonable attorney's fee to be allowed the plaintiff as and for attorney's fee in this action; and that the plaintiff is entitled to Judgment against the defendant, Hattie L. Mosher, in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars, with interest thereon at the rate of eight (8%) percent per annum from October 7, 1936, until paid; the further sum of \$900.00 as attorneys' fee and for plaintiff's costs here incurred and expended.

Dated this 28 day of December, 1936.

DAVE W. LING

Judge of U. S. District Court.

[Endorsed]: Filed Jan. 11, 1937.

Defendant's Exhibit D (Continued)

District Court of the United States District of
Arizona

No. E-319-Phoenix

JULIA C. COLLINS, a Minor, by COIT I.
HUGHES, her Guardian Ad Litem,

vs.

WILLIAM A. VAN BENSCHOTEN, as Guardian
of the Person and Estate of RICHARD I.
VAN BENSCHOTEN, a Minor, and VAN
BENSCHOTEN ESTATES, INCORPOR-
ATED, a corporation, HATTIE L. MOSHER,
JOE O'CONNELL and JESSIE B. O'CON-
NELL, his wife, Defendants.

JUDGMENT AGAINST DEFT. HATTIE L.
MOSHER

The defendant Hattie L. Mosher having been duly
summoned and failing to answer or plead and hav-
ing been called and failing to respond thereto her
default has heretofore by order of Court been en-
tered and the allegations of the Bill of Complaint
and amendments thereto are taken as confessed to
be true in so far only as to such non appearing de-
fendant, Hattie L. Mosher; the Court being advised
in the premises in the pleadings and the confession
by failure to answer, plead or appear by said Hattie
L. Mosher;

It is ordered, adjudged and decreed that the de-

Defendant's Exhibit D (Continued)

fendant, Hattie L. Mosher, is indebted to the plaintiff, Julia C. Collins, who sues by Coit I. Hughes, as Guardian Ad Litem by permission and order of this Court, in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars, as of date October 7, 1936, the said sum being the principal and interest thereon at eight (8%) per cent. compounded at semi-annual rests as in the note provided, from the date of the assignment by Josephine Gerard to Julia Mosher Collins, October 7, 1919, to October 7, 1936, secured by a lien on certain real estate set out and described in that certain mortgage executed by Green & Griffin, a corporation, and assumed by said Hattie L. Mosher in her purchase thereof, as well as in said Mosher's agreement in the extension of the payment of such note and mortgage, which said real estate is set out in the Bill of Complaint and described as follows:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging.”

Wherefore, the premises considered,

It is ordered, adjudged and decreed that the plaintiff, Julia C. Collins, who sues by Coit I. Hughes, Guardian Ad Litem, do have and recover judgment

Defendant's Exhibit D (Continued)

against said Hattie L. Mosher in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars with interest thereon at the rate of eight (8%) per cent. per annum from October 7, 1936, intil paid; also recover of such defendant, Hattie L. Mosher, the further sum of Nine Hundred (\$900.00) Dollars with interest from the date of this Decree as and for reasonable attorneys fee stipulated and promised to be paid by the note in case suit is brought thereon; also recover of such defendant, Hattie L. Mosher, the costs of plaintiff incurred and expended herein, to be taxed by the clerk of this Court, for all of such sums the plaintiff may have execution.

It appearing from the Second Amended Complaint and proof introduced herein that the plaintiff has a lien secured by mortgage on the above described property, the same having been executed by Green & Griffin, dated the 24th day of February, 1913, and assumed by the defendant, Hattie L. Mosher in her purchase from Green & Griffin as well as in her written assumption of the obligation in the Agreement of Extension made with Josephine Gerard;

Therefore, it is ordered, adjudged and decreed that the said mortgage lien on the above described Lots One (1) and Two (2) Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa

Defendant's Exhibit D (Continued)

County, Arizona, together with all the privileges and appurtenances to the same belonging, be foreclosed and the property be sold at public outcry after due notice of publication thereof, as provided by the Statute Law of the State of Arizona for publication; the sale is to be for cash and to the highest bidder and the said two lots shall be sold in payment or satisfaction of the plaintiff's said debts, including the attorney's fees and costs; the plaintiff or any person may be the purchaser at such sale; however, if the plaintiff be the purchaser and the sale of said lots be not sufficient to pay her debt and costs herein adjudged, then the plaintiff or her Guardian Ad Litem may be declared the purchaser upon the proceedings or acknowledgment of the payment of said plaintiff's debt in full; or if the property should bring more than the amount of this judgment herein adjudged to the plaintiff, then the plaintiff may credit the amount of such purchase bid by the amount of her judgment, interest, attorney's fees and costs, to pay the remainder in money within thirty (30) days after the confirmation of this sale; That J. S. Wheeler be appointed the special Master of this Court to carry this Judgment into effect and conduct such sale; and he will make due advertising thereof, being first indemnified against the cost of publication and advertisement; and the said special Master will be allowed for his services in conducting such sale and the distribution of proceeds, if any, a reasonable fee for such

Defendant's Exhibit D (Continued)

service, which fee may be included in the costs of sale, together with the costs of the advertisement and publication; and he will make due report of his acts hereunder to this Court for confirmation and will be required to execute bond as such special Master in the sum of Thousand Dollars. And this case is continued for such further orders as may be necessary to carry this Judgment into effect.

Done in open Court this 28 day of Dec, 1936.

DAVE W. LING

Judge of United States District Court.

[Endorsed]: Filed Jan. 11, 1937.

[Title of District Court and Cause.]

SPECIAL MASTER'S RETURN ON ORDER
OF SALE & WRIT OF EXECUTION

I, J. S. Wheeler, the duly qualified, appointed and acting Special Master in the above entitled action, do hereby report, certify, and make my return as follows, to-wit:

RETURN ON ORDER OF SALE

1. That pursuant to my appointment as Special Master to conduct the Sale on Foreclosure according to the Decree of Judgment signed by the Honorable Presiding Judge, Dave W. Ling, December 28, 1936 and recorded and docketed in Judgment Docket Book No. 2, at Page 115 thereof, and under and by

Defendant's Exhibit D (Continued)

virtue of that certain Order of Sale issued out of the said United States District Court for the District of Arizona February 13, 1939, which is hereto attached and made a part of this return I did proceed as follows:

2. From February 17, to March 17, 1939, I did advertise and Notice for Sale the property described in the judgment in this cause at a sale by public outcry to be held at the main Washington Street entrance to the Court House of Maricopa County, State of Arizona, located in above set forth Federal District of Arizona, at 10:00 A. M. on Friday, March 17, 1939, all and singular the property described in said Order of Sale.

3. That said advertisements and notices of sale were made in the following manner, to-wit:

By posting true and correct of my Special Master's copies, Notice of Sale, a copy of which is attached hereto, marked Exhibit "A" and made a part of this return, in not less than three (namely four) public places within the county and Federal District wherein the property is situated, all in Phoenix, Arizona.

a—One on a bulletin board near the north door of the Washington Street entrance to the said Maricopa County courthouse.

b—One on a bulletin board in the said County Court House grounds, south thereof, and abutting on a public street.

c—One on a bulletin board at the south west cor-

Defendant's Exhibit D (Continued)

ner of the grounds of the Phoenix City Hall and abutting on a public street.

d—One on the door frame of the Washington Street entrance of a business building at the corner of Fourth and Washington Streets (northeast) and protruding and abutting on a public street.

By causing a true and correct copy of said Special Master's Notice of Sale to be printed and published four consecutive times, namely—February 17 and February 24, March 3 and March 10, 1939, in the "Glendale News" a newspaper of general circulation printed and published in the said county and Federal District in which the property is situated, all of which publication more particularly appears in the publisher's Affidavit hereto attached and marked Exhibit "B" and by reference made part of this return.

4. That the property "Notice for Sale" was more particularly described as follows, to-wit:

"Lots One (1) and Two (2), in Block Three (3) of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder in Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging."

5. That thereafter, and on the 17th. day of March, 1939, at the time and place mentioned as aforesaid, I offered for sale, at public outcry, to the highest bidder, all of the said property herein-

Defendant's Exhibit D (Continued)

before described and thereupon received a bid from Julia C. Collins, by, and through, her attorney of record, George F. Macdonald in the sum of Forty One Thousand Nine Hundred and Fifty Seven Dollars and Twenty Three Cents, (\$41,957.23), that being the highest and best bid made. That thereafter and thereupon I struck off and sold the above described property to Julia C. Collins for the said sum.

6. That in connection with said sale I necessarily incurred costs and expenses of sale in the sum of One Hundred and Ten Dollars and Fifty Eight Cents, this sum includes my fee as Master, and is as follows, to-wit:

COSTS OF SALE

\$100.00—Fee of Special Master for conducting sale.

8.50—Cost of publishing Notices of Sale.

2.00—Cost of posting 4 Notices of Sale.

\$110.58—Total costs of sale.

That the itemized amounts of the judgment and accruing interests are as follows, to-wit:

\$34,148.83—Amount of judgment and interest to October 7, 1936.

6,677.97—Interest from October 7, 1936 to March 17, 1939.

Defendant's Exhibit D (Continued)

\$40,826.80—Due on judgment to date of sale.

110.58—Costs of Sale advanced by attorney for
Julia C. Collins.

\$40,937.38—Due Julia C. Collins, the plaintiff.

900.00—Attorney's fee cause.

119.85—Interest on attorney's fee from date
of trial.

\$41,957.23—Total amount of judgment at date of
sale, March 17, 1939.

Respectfully submitted to the Honorable United
States District Court for the District of Arizona.

Dated March 29th, 1939.

J. S. WHEELER

Special Master in Equity No.
319, Phoenix, Arizona.

EXHIBIT "A"

The Glendale News

(In Equity)

No. E-319—Phoenix

SPECIAL MASTER'S NOTICE OF SALE

In the United States District Court, District
of Arizona.

Julia C. Collins, plaintiff, vs. William A. Van
Benschoten, as Guardian of the person and Estate
of Richard I. Van Benschoten, a minor, and Van

Defendant's Exhibit D (Continued)

Benschoten Estates, Incorporated, a corporation, Hattie L. Mosher, Joe O'Connell and Jessie B. O'Connell, his wife, defendants.

Notice is hereby given that the undersigned, J. S. Wheeler, Special Master, has received an Order of Sale, under the hand and seal of the Clerk of the United States District Court for the District of Arizona, dated February 13, 1939, in the case of Julia C. Collins, a minor, by Coit I. Hughes, her guardian at litem, plaintiff, vs. William A. Van Benschoten, as Guardian of the Person and Estate of Richard I. Van Benschoten, a Minor, and Van Benschoten Estates, Incorporated, a corporation, Hattie L. Mosher, Joe O'Connell and Jessie B. O'Connell, his wife, defendants. No. E-319—Phoenix, in Equity, in which case judgment was rendered in said United States District Court in favor of the plaintiff and against the defendant, Hattie L. Mosher, on the 28th day of December, 1936, and filed January 11, 1937, in the aggregate sum of Thirty-Four Thousand, One Hundred and Forty-Eight and 83/100 Dollars (\$34,148.83) as of date of October 7, 1936, with interest thereon at eight percent (8%) per annum from October 7, 1936, until paid; plus Nine Hundred Dollars (\$900.00) Attorney's fee with interest thereon at Six per cent (6%) from December 28, 1936, until paid; plus the costs of suit as taxed by the Clerk of this Court; and a decree of foreclosure of the lien of the mortgage referred to in said decree,

Defendant's Exhibit D (Continued)

and which said judgment directed that an order of sale of the property described therein, and hereafter fully described, be issued; that said judgment and decree of foreclosure is docketed in Judgment Docket Book No. 2, at page 115 thereof, in the Phoenix Office of the Clerk of said United States District Court; that by said judgment and order of sale I am directed to sell the hereinafter described property for the satisfaction of the above mentioned amounts, interests, costs, expenses and accruing costs; Now Therefore, notice is hereby given that on the 17th day of March, 1939, at the hour of 10:00 A. M. on said day, at the main Washington Street entrance of the Court House, of Maricopa County, Arizona, I, as Special Master of this Court, will sell at Public Outcry the following described property, to-wit: "Lots One (1) and Two (2), in Block Three (3), of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder in Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging." The above described property shall be sold at Public Outcry to the highest bidder for cash, the said cash must accompany such bid, subject to the confirmation of such sale by the above entitled court. Upon confirmation of such sale by the United States District Court for the District of Arizona, I will issue to the purchaser a Certifi-

Defendant's Exhibit D (Continued)

cate of Sale and after the time allowed by law for the redemption of real property has expired I will issue a good and sufficient deed to the purchaser of said real property at such sale, or to his heir, heirs, representatives, assigns or nominees of such purchaser.

In Witness Whereof, I have hereunto set my hand this 15th day of February, 1939.

Signed: J. S. WHEELER,
Special Master.

Feb. 17 to

March 10, 1939.

EXHIBIT "B"

AFFIDAVIT OF PUBLICATION

I, Wm. M. Ryan Publisher of The Glendale News a newspaper of general circulation, printed and published in the City of Glendale, County of Maricopa, State of Arizona, do solemnly swear that a copy of the above notice, in the matter of Special Master's Notice of Sale No. EO319 as per clipping attached, was published weekly in the regular and entire edition of the said newspaper, and not in any supplement thereof, for a period of 4 consecutive weeks, as follows, to-wit:

Feb. 17-March 10, 1939, inclusive.

WM. M. RYAN

Defendant's Exhibit D (Continued)

Subscribed and sworn to before me, this 13
day of March 1939.

[Seal] JAY SIGWORTH,

Notary Public.

(My commission expires 3/9, 1940)

[Title of District Court and Cause.]

EXECUTION OF JUDGMENT AGAINST DE-
FENDANT HATTIE L. MOSHER AND
ORDER OF SALE.

The President of the United States of America
To J. S. Wheeler, Special Master appointed herein,
of Phoenix, Maricopa County, State of Ari-
zona;

Greeting:

Whereas, the above named plaintiff, Julia C. Collins, by Coit I. Hughes, her Guardian ad litem, did on the 28th. day of December, 1936, recover a judgment and a decree of foreclosure and an order of sale of the property therein described against the defendant Hattie L. Mosher, which said judgment, decree, and order was filed January 11, 1937 and docketed in Judgment Docket Book No. 2, thereof and is in words and figures as follows, to-wit:

Defendant's Exhibit D (Continued)

District Court of the United States,
District of Arizona

No. E-319-Phoenix

Julia C. Collins, a Minor, by Coit I. Hughes, her
Guardian Ad Litem,

Plaintiff,

vs.

William A. Van Benschoten, as Guardian of the
Person and Estate of Richard I. Van Ben-
schoten, a Minor, and Van Benschoten Es-
tates, Incorporated, a corporation, Hattie L.
Mosher, Joe O'Connell and Jessie B. O'Con-
nell, his wife,

Defendants.

JUDGMENT AGAINST DEFENDANT
HATTIE L. MOSHER

The defendant Hattie L. Mosher having been duly summoned and failing to answer or plead and having been called and failing to respond thereto her default has heretofore by order of Court been entered and the allegations of the Bill of Complaint and amendments thereto are taken as confessed to be true in so far only as to such non appearing defendant, Hattie L. Mosher; The Court being advised in the premises in the pleadings and the confession by failure to answer, plead or appear by said Hattie L. Mosher;

Defendant's Exhibit D (Continued)

It Is Ordered, Adjudged and Decreed that the defendant, Hattie L. Mosher, is indebted to the plaintiff, Julia C. Collins, who sues by Coit I. Hughes, as Guardian Ad Litum by permission and order of this Court, in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars, as of date October 7, 1936, the said sum being the principal and interest thereon at eight (8%) per cent. compounded at semi-annual rests as in the note provided, from the date of the assignment by Josephine Gerard to Julia Mosher Collins, October 7, 1919, to October 7, 1936, secured by a lien on certain real estate set out and described in that certain mortgage executed by Green & Griffin, a corporation, and assumed by said Hattie L. Mosher in her purchase thereof, as well as in said Mosher's agreement in the extension of the payment of such note and mortgage, which said real estate is set out in the Bill of Complaint and described as follows:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging.”

Wherefore, the premises considered,

It Is Ordered, Adjudged and Decreed that the

Defendant's Exhibit D (Continued)

plaintiff, Julia C. Collins, who sues by Coit I. Hughes, Guardian Ad Litum, do have and recover judgment against said Hattie L. Mosher in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars with interest thereon at the rate of eight (8%) per cent. per annum from October 7, 1936, until paid; also recover of such defendant, Hattie L. Mosher, the further sum of Nine Hundred (\$900.00) dollars with interest from the date of this Decree as and for reasonable attorneys fee stipulated and promised to be paid by the note in case suit is brought thereon; also recover of such defendant, Hattie L. Mosher, the costs of plaintiff incurred and expended herein, to be taxed by the clerk of this Court, for all of such sums the plaintiff may have execution.

It appearing from the Second Amended Complaint and proof introduced herein that the plaintiff has a lien secured by mortgage on the above described property, the same having been executed by Green & Griffin, dated the 24th day of February, 1913, and assumed by the defendant, Hattie L. Mosher in her purchase from Green & Griffin as well as in her written assumption of the obligation in the agreement of Extension made with Josephine Gerard;

Therefore, It Is Ordered, Adjudged and Decreed that the said mortgage lien on the above described Lots One (1) and Two (2) Block Three

Defendant's Exhibit D (Continued)

(3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging, be foreclosed and the property be sold at public outcry after due notice of publication thereof, as provided by the Statute Law of the State of Arizona for publication; the sale is to be for cash and to the highest bidder and the said two lots shall be sold in payment or satisfaction of the plaintiff's said debt, including the attorney's fees and costs; the plaintiff or any person may be the purchaser at such sale; however, if the plaintiff be the purchaser and the sale of said lots be not sufficient to pay her debt and costs herein adjudged, then the plaintiff or her Guardian Ad Litum may be declared the purchaser upon the proceedings or acknowledgment of the payment of said plaintiff's debt in full; or if the property should bring more than the amount of this judgment herein adjudged to the plaintiff, then the plaintiff may credit the amount of such purchase bid by the amount of her judgment, interest, attorney's fees and costs, to pay the remainder in money within thirty (30) days after the confirmation of this sale;

That J. S. Wheeler be appointed the special Master of this Court to carry this judgment into effect and conduct such sale; and he will make due

Defendant's Exhibit D (Continued)

advertising thereof, being first indemnified against the cost of publication and advertisement; and the said special Master will be allowed for his services in conducting such sale and the distribution of proceeds, if any, a reasonable fee for such service, which fee may be included in the costs of sale, together with the costs of the advertisement and publication; and he will make due report of his acts hereunder to this Court for confirmation and will be required to execute bond as such special Master in the sum of Thousand Dollars.

And this case is continued for such further orders as may be necessary to carry this Judgment into effect. Done in open Court this 28 day of Dec. 1936.

DAVE W. LING,

Judge of United States District Court.

Filed Jan. 11, 1937. Edward W. Scruggs, Clerk. United States District Court for the District of Arizona, by Helen Roach, Deputy Clerk.

Now, Therefore, you the said J. S. Wheeler, Special Master appointed, are hereby commanded and required to seize, advertise for sale and to sell at Public Outcry according to the Statutes of the United States and complying as far as may be with the Statute Laws of the State of Arizona and the usual course of proceedings provided for this Court in Equity cases heretofore as well as the requirements and directions in said decree and

Defendant's Exhibit D (Continued)

judgment, the property hereinabove described and set forth, and to apply the proceeds to the satisfaction in whole or in part, of the said judgment and Order of Sale with its accrued interest and costs and accruing costs incident to the advertisement and sale; and make and file your report of your acts hereunder with the clerk of this court within 20 days after you have made such sale, and do all the things required by the decree of sale and foreclosure and the Statutes in such cases provided. Given under my hand and seal of said United States District Court, at Phoenix, Arizona, this 13th day of February, 1939.

[Seal]

EDWARD W. SCRUGGS,
Clerk.

By HELEN STROUP,
Deputy Clerk.

[Endorsed]: Filed Mar. 29, 1939.

[Title of District Court and Cause.]

ORDER CONFIRMING SALE

The Return of the Execution of Judgment and Order of Sale, and Report thereon, having been duly filed in this court, in the above entitled cause, by the Special Master, J. S. Wheeler, who was heretofore appointed by this court to conduct the sale of the property set forth in the judgment and in the order of sale as being foreclosed, having been heretofore made and filed herein, and the petition of

Defendant's Exhibit D (Continued)

the plaintiff and purchaser for confirmation of the sale of said property having been filed with the Clerk of this Court, this court finds as follows, to-wit:

That J. S. Wheeler, the duly appointed, qualified and acting Special Master has fully complied with all of the duties and directions contained in said Execution of Judgment and Order of Sale issued out of this court February 13, 1939, by the Clerk of this Court.

That the said J. S. Wheeler duly and correctly gave the Legal Notices and Publications required by law and the usual practices of this Court and the State of Arizona and the statutes therein.

That the sale of the said property described in the Judgment and in the Execution of Judgment and Order of Sale and in the Notices posted and published was held by public outcry on the 17th day of March, 1939 was held and conducted, by the said Special Master, according to the requirements of the Statutes concerned, and in all respects as provided in said Execution of Judgment and Order of Sale, and at said sale the said J. S. Wheeler sold the said property for the sum of \$41,957.23 to Julia C. Collins, the plaintiff in this cause, her bid being the highest and best bid made at the sale, for the said property.

It Is Further Ordered Adjudged and Decreed that the said Return and Report of Sale is accepted as conclusive, true and in all respects as

Defendant's Exhibit D (Continued)

correct. That the sale is, by this Court, made final and absolute and is hereby confirmed.

That the land set forth in this confirmation is:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat thereof on file and of record in the office of the Recorder of Maricopa County, Arizona, in Book 1 of Maps at Page 15, thereof, together with all the privileges and appurtenances to the same belonging.”

The said Special Master, J. S. Wheeler, is ordered and directed to execute and deliver to the said Julia C. Collins, her heirs or assigns, a certificate of sale on foreclosure for all of the said property sold to her, as required by law, and after the time allowed by law for the redemption of real property has expired, if the real property so sold has not been redeemed by some person or persons having the legal right to redeem, the said Special Master shall execute a good and sufficient deed of the said property to Julia C. Collins, her heirs or assigns, conveying all of the said property so sold. After the execution of said deed all rents and incomes and benefits therefrom shall accrue to Julia C. Collins.

Done in Open Court March 31, 1939.

DAVE W. LING,

Presiding Judge for the District of Arizona.

[Endorsed]: Filed Mar. 31, 1939.

Defendant's Exhibit D (Continued)

The United States District Court for the
District of Arizona

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect, and complete copy of Order for Decree Pro Confesso, Findings of Fact, Judgment against Defendant Hattie L. Mosher, Special Master's Return on Order of Sale and Writ of Execution, and Order Confirming Sale, in case No. E-319 Phoenix, Julia C. Collins, a minor, by Coit I. Hughes, her Guardian ad litem, plaintiff, vs. Hattie L. Mosher, et al, Defendants, as the same appears from the original record remaining in my office.

Witness my hand and the seal of said Court this 18th day of March, A. D. 1941.

[Seal] EDWARD W. SCRUGGS,
Clerk.

By WM. H. LOVELESS,
Chief Deputy.

DEFENDANT'S EXHIBIT E

Sub: Churchill Add. Lot: 1 and 2 Block: 3 Section:..... Twp:..... Range:.....

Sub: 6-6-34 Lot:..... Block:.....

Section: 17511 Twp:----- Range:-----

Date Recorded: 10-2-39 Fee: 25435 Date of Deed: 10-2-39.

Kind of Deed: Deed of Special Master Book:
337 Page: 148.

Transferred from: Lot 1 Hattie L. Mosher Lot
2 Joe O'Connell, J. S. Wheeler, as Special Master
in Equity 319 Phoenix, Dist. of Arizona.

Transferred to: Julia C. Collins.

Address: (Geo. F. Macdonald, Luhrs Tower)

Description:

Lot 1 to collins Lot 2 to O'Connell should not
be included in suit—will get deed if not, suit to
quiet Title.

No. Equity-319 Phoenix—entitled—Julia C. Col-
lins, a minor, by Coit I. Hughes, her guardian ad
litem, plttf. vs. William A. Van Benschoten as
Gdn. of the person and Est. of Richard I. Van
Benschoten, minor and Van Benschoten Estates,
Hattie L. Mosher, Joe O'Connell, deft.

Transferred by: J.

O'CONNELL BROTHERS, INC.

Automobile Rebuilding

505 North Central Avenue

Phoenix — Arizona

December 28, 1939.

Mr. J. D. Brush,
County Assessor,
Phoenix, Arizona.

Re: Lot 2, Block 3 of Churchill Addition to
the City of Phoenix.

Dear Mr. Brush:

It is my understanding that it is the practice of

your office to assess property in the name of a new owner when such ownership is disclosed by Sheriff's Deed or otherwise.

I am still the owner and in possession of the above described property, also known as 505 North Central Avenue, which you have for several years past assessed in my name.

A Sheriff's Deed was recently issued to one Julia C. Collins in satisfaction of an execution upon a judgment obtained by her against Hattie Mosher, who at the time had no interest whatsoever in the property. It was, in fact, a suit between Hattie Mosher and her grand daughter Julia C. Collins. The records of the Federal Court will disclose that the action was dismissed as to me and that my title remains unaffected by the judgment except for the apparent cloud created by this deed, and this cloud is being removed by an action to quiet title, soon to be instituted by the Phoenix Title and Trust Company in my behalf.

Will you, therefore, please continue to assess the property in my name as in past years?

Very truly yours,

Signed: JOE O'CONNELL

Ck. at Title Company Lot 2 should never have been in the suit. Title will be cleared soon 1/8/40. J.

State of Arizona,
County of Maricopa—ss.

I, J. D. (Jim) Brush, County Assessor in and for the County and State aforesaid, hereby certify that I have compared the foregoing copy with the

original thereof on file in my office, in file drawer labeled Transfers A to H Inclusive, contained in Maricopa County G 3165 Steel File, on the 2nd day of August, 1940, and that the same is a full, true and correct copy of such paper and of the whole thereof.

Witness my hand and seal of office, this 2nd day of August, 1940.

[Seal]

J. D. BRUSH,

County Assessor.

By.....

Deputy.

[Endorsed]: Filed Sep. 16, 1942.

[Endorsed]: No. 10187. United States Circuit Court of Appeals for the Ninth Circuit. Julia C. Collins and Hattie L. Mosher, Appellants, vs. Joe O'Connell and Jessie B. O'Connell, husband and wife, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed July 6, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

